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# REPORTS OF COMMITTEES

OF THE

# SENATE OF THE UNITED STATES

FOR THE

## FIRST SESSION OF THE FORTY-SEVENTH CONGRESS.

## 1881-'82.

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IN FOUR VOLUMES.

Volume 1.—Nos. 1 to 343, inclusive, except No. 265.
Volume 2.—No. 265, parts 1 and 2.
Volume 3.—Nos. 344 to 588, inclusive.
Volume 4 —Nos. 589 to 878, inclusive.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 589.

# IN THE SENATE OF THE UNITED STATES.

MAY 17, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Indian Affairs, submitted the following

# REPORT:

[To accompany bill S. 1332.]

*The Committee on Indian Affairs, to whom was referred the bill* (S. 1332) *for the relief of the Delaware Indians, in accordance with treaty stipulations, have had the same under consideration, and report:*

The facts are fully set forth in House report No. 557 made at this session of Congress upon a similar bill, and the same is adopted as the report of your committee.

The House report is as follows:

By the treaty of September 24, 1829, between the United States and the Delaware Indians, it was agreed by the parties that the country in the fork of the Kansas and Missouri Rivers, extending up the Kansas River to the Kansas line, and up the Missouri River to Camp Leavenworth, and thence by a line drawn westwardly, leaving a space of ten miles wide north of the Kansas boundary line for an outlet, shall be conveyed and forever secured by the United States to the said Delaware Nation as their permanent residence.

By the first article of the treaty of May 6, 1854, between the same parties, a permanent reservation was set aside for the Delawares out of the lands guaranteed to them by the treaty of 1829, and the remainder of the lands were sold for their benefit.

By the treaty of May 30, 1860, eighty acres to each member of the tribe was to be allotted in severalty out of the above reservation, and the remainder sold for their benefit to the Leavenworth, Pawnee and Western Railroad Company. The sixth article of this treaty, among other things, provides: "It is further understood that at the treaty between the Delawares and the United States made September 24, 1829, the boundary of the reservation then set apart for them included the half-breed Kansas lands, but it afterwards proved that the United States had previously set apart those lands for the half-breed Kaws, and by that means they have been kept out of the use and benefit of said lands. It is therefore hereby agreed that a fair valuation should be made by the United States upon such lands, under the direction of the Secretary of the Interior, and that the amount of said valuation shall be paid the Delawares."

By the treaty of July 4, 1866, the Delawares ceded the remainder of their lands in Kansas to the United States, to be sold to the Leavenworth, Pawnee and Western Railroad Company, the United States guaranteeing the payment to them of the full value of the same, and agreeing to sell them a tract of land, in compact form, in the Indian Territory, equal to one hundred and sixty acres for each member of the tribe, at the price per acre paid for the same by the United States, said land to be paid for by the Delawares out of moneys arising from the sale of their said lands in Kansas.

It was further provided by the fourteenth article of said treaty "that in accordance with the sixth article of the Delaware treaty of May 30, 1860, which had not yet been fulfilled," in the payment to be made by the Delawares for their lands in the Indian Territory they should "receive, without cost, from the United States, land included within their new reservation to the amount of twenty-three sections, in place of the twenty-three sections of half-breed Kaw lands referred to in said sixth section of the treaty of 1860."

By the 15th article of the treaty of July 19, 1866, with the Cherokees, it was agreed "that the United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokees' country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States."

Accordingly, on the 8th day of April, 1867, it was agreed between the Cherokees and the Delawares that the former would sell the latter, within the territory named, a quantity of land, in the aggregate equal to one hundred and sixty acres for each individual of the Delaware tribe who had been, or might be, within one month, enrolled for removal to the Indian Territory, for which the Delawares agreed to pay one dollar per acre, authority being given the Secretary of the Interior to transfer to the Cherokees, at their market value at the date of transfer, sufficient of the United States bonds belonging to the Delawares to pay for the amount of lands necessary for the settlement of the Delawares when the number removing had been ascertained. This agreement was approved by the President April 11, 1867. It was subsequently ascertained that 985 Delawares had removed to the Cherokee country, requiring, at one hundred and sixty acres each, 157,600 acres, amounting, at one dollar per acre, to $157,600. From the report of the Commissioner of Indian Affairs for the year 1869, page 484, it appears that payment was made for these lands by a transfer of the Delaware general trust fund, to the amount of $157,600, to the credit of the Cherokee funds, upon the trust-fund book of the Interior Department, on the 13th day of May, 1869.

In this transaction no account was taken of the said twenty-three sections of land and its value; $14,720 is still due the Delawares.

The United States insists upon a strict compliance of their treaty obligations on the part of the Indians, and yet in the case of this friendly and civilized tribe it has disregarded its solemn contract for thirteen years. This money is due the Delawares and ought to have been paid years ago.

Good faith demands its payment, and the passage of the bill is recommended.

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r. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 927.]

*he Committee on Claims, to whom was referred the bill (S. 927) for the relief of John T. Pickett, have had the same under consideration, and submit the following report:*

It appears that John T. Pickett was for several years the consul of he United States at Vera Cruz, Mexico, and at a period from 1853 to 61, when many destitute Americans required relief from our representative at that port. Among these were certain American colonists, nown at the time as the "La Paz prisoners," who were assisted by onsul Pickett, and, under instructions from the then American minister Mexico, these distressed Americans were sent home by Consul Pickett. t his personal expense to the amount of $1,375, for which he has never een reimbursed.

A similar bill was reported favorably by the Forty-sixth Congress. his case has been examined by the House Committee on Foreign Affairs f the present Congress, through Mr. Dunnell, of that committee, who ade a favorable report thereon, and recommended the passage of a bill H. R. 4658) as a substitute for the original bill. The following is the eport of the House Committee on Foreign Affairs.

The Committee on Foreign Affairs, to whom was referred the bill (H. R. 649) for the elief of J. T. Pickett, have had the same under consideration, and, adopting the language of a report from the Committee on Commerce made on a similar bill in the Forty-sixth Congress, recommend the passage of the bill, and make the following report.

The petitioner in this case was for a number of years the United States consul at Vera Cruz, in the Republic of Mexico, his term of service extending (with the exception of a portion of one year) uninterruptedly from the autumn of 1853 until February, 1861. That during this long period he was almost constantly called upon to relieve

relieved, and they were all gone to their homes in the several quarters of the United States. The United States minister subseqnently assured the petitioner that he would see the matter properly adjusted and paid, but in coming down to the sea-coast sometime afterward, all of his baggage and papers, including the "La Paz prisoners'" correspondence, was stolen and destroyed by highwaymen, and some time after the excellent minister departed this life, leaving the matter unadjusted, this petitioner not having cared to press it.

In February, 1861, petitioner presented a memorial for reimbursement to Congress, but withdrew it on account of the imminence of civil war. Having incurred the expense in obedience to command of his superior officer, the petitioner has never abandoned his just expectation that the money would be refunded him whenever he should make due petition to Congress.

The petitioner did not trouble either the State or Treasury Department with any special reports of the transaction or demands for repayment, as he well knew that no such account could be paid, the law contemplating only relief of sick and destitute *seamen*; but the petitioner had much unofficial correspondence on the subject with the then chief of the Consular Bureau, Department of State (R. S. Chew, esq., now deceased), who thought at one time the amount might be paid out of the contingent fund, but who finally advised recourse to Congress.

It is worthy of note that the "La Paz prisoners" were not *fillibusters*, but laboring under the mistaken notion that colonization was free in Mexico, they entered her territory in good faith. Being captured, they were protected and released by the United States, and a number of them have recovered damages against Mexico in the late United States and Mexican Claims Commission. But the petitioner is still without compensation for expenditures incurred in their relief by order of so exalted an officer as the minister plenipotentiary. In view of the foregoing facts the committee recommend the passage of the accompanying bill for the relief of the petitioner.

Your committee append to this report a copy of a letter from the Secretary of State, dated February 11, 1861:

"DEPARTMENT OF STATE,
"*Washington, February* 11, 1861.

"SIR: I have the honor to acknowledge the receipt of your communication of the 6th instant, transmitting the memorial of John T. Pickett, consul of the United States at Vera Cruz, Mexico, praying to be reimbursed for expenditures alleged to have been incurred by him during his consular service, for food, clothing, and passage to the United States supplied to American citizens (not seamen), who, from being in destitute circumstances, sick, and unable to obtain employment, called upon him for assistance.

"In answer to your request to be furnished with any information which may be had in this department bearing upon the subject, and with my views as to the propriety or expediency of granting the relief asked for, I have the honor to state that no official communication has been received from Mr. Pickett relating to the matter.

"His failure to bring it before the department was doubtless caused by his knowledge that no general appropriation, subject to the disposition of the Department of State, has been made by Congress for the relief of American citizens in foreign countries, other than seamen, and that the department, consequently, had no means at its disposal to refund to our consuls abroad the disbursements which many of them are compelled to make for the relief of indigent American citizens, who often apply to them for aid, and who would perish in the streets if it were not offered.

"So heavy are the expenses to which our diplomatic and consular officers have been subjected in relieving and protecting American citizens, not seamen, that recommendations were made by Mr. Everett and Mr. Marcy to the appropriate committees of Congress for an appropriation to be placed at the disposition of the Department of State to enable it to reimburse these officers for expenses thus from time to time incurred.

"Mr. Pickett has discharged the duties of consul at Vera Cruz for many years to the entire satisfaction of the department. He is a highly honorable and meritorious officer, and his statements are entitled to the confidence of your committee. The department does not hesitate to recommend that the relief asked for by him be granted.

"Special appropriations have been made by Congress for similar expenses, in the cases of the United States commercial agents at St. Domingo and Mauritius, and the United States consuls at Hong-Kong and Panama (see Statutes at Large, vol. x, pages 94, 659, and 667, respectively, and vol. xi., pages 487 and 488, private acts).

"Mr. Pickett's memorial is herewith returned.

"I have the honor to be, sir, your obedient servant,

"J. S. BLACK.

"Hon. WM. BIGLER,
"*Chairman Committee on Commerce, Senate.*"

Your committee are of opinion that the above report fully states the facts in the case, and that Mr. J. T. Pickett is entitled to be reimbursed for his outlay in these premises and to the relief claimed. Therefore, your committee report the accompanying bill as a substitute, being identical with that reported from the House Committee on Foreign Affairs, and recommend its passage:

A BILL for the relief of J. T. Pickett.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to pay to J. T. Pickett, formerly consul at Vera Cruz, Mexico, out of any unappropriated money in the United States Treasury, the sum of one thousand three hundred and seventy-five dollars, or so much thereof as may be necessary, being the amount advanced and disbursed by him, while acting as such consul, for the relief of destitute American citizens not seamen: *Provided*, That such proof be made of the said expenditures as shall be satisfactory to the Secretary of State.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 591.

# IN THE SENATE OF THE UNITED STATES.

MAY 17, 1882.—Ordered to be printed.

Mr. HAMPTON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1749.]

*The Committee on Military Affairs, to whom was referred the bill (S. 1749) for the relief of William McNamara, have had the same under consideration and recommend its passage.*

It appears that first sergeant William McNamara, of Troop A, Fourth Cavalry, is a soldier of over twenty-five years' service. The following is his record: Discharged as private, October 3, 1861; character, "excellent"; re-enlisted same day, discharged March 25, 1864; character, "very good"; re-enlisted same day, discharged as sergeant March 25, 1867; character, "excellent"; re-enlisted as sergeant same day, discharged as first sergeant March 25, 1872; character, "excellent. As a soldier, faithful and reliable; as a non-commissioned officer, one of the best in the service"; re-enlisted same day, and discharged as sergeant March 25, 1877; character, "excellent"; re-enlisted March 26, 1877, and discharged as sergeant January 24, 1879; character, "excellent"; enlisted at Fort Clarke, Texas, September 12, 1879; and now serving as first sergeant, Troop A, Fourth Cavalry. During his service as a private, he took part in several Indian engagements, and was for a long time one of General Albert Sydney Johnson's orderlies during the Utah expedition. During the war he took part in the following battles, viz: Chickamauga, West Point, Okalona, Dallas, Lovejoy's Station, Selma, Columbus, Nashville, and Pulaski. He was twice selected as a bearer of a flag of truce; once at Waterloo, Ala., and again after the battle of Selma, when he was the bearer of a flag of truce to General Forrest. Since the war, he has taken part in the following Indian fights, viz: North Fork of Hubbard Creek, Texas; Phantom Hill, Texas; North Fork of Red River, Indian Territory; North Fork of Powder River, Wyoming Territory; and Famished Woman's Fork, Kansas. In 1872, he was awarded a medal of honor for gallantry in an affair with hostile Indians. In 1879, he asked for his discharge under the following circumstances: His wife's health became very much impaired, and he was anxious that she should return to Ireland. He had a considerable sum of money deposited with the paymaster, which, under the law, he could not draw until discharged. He accordingly asked that he be discharged and allowed to re-enlist immediately, and then be granted a furlough. In this way he would be enabled to get his deposited money, and settle his family in Ireland, and then return. This application, which was strongly

indorsed by his commanding officer, was not granted, and he then applied for his unconditional discharge, which was granted. After settling his family he returned and enlisted. On re-enlisting he had been out of service over thirty days, and consequently lost the benefit of his continuous service, and was simply entitled to pay under the act of August, 1854, or $16 a month as a private, or $25 a month as a first sergeant. If he had been continuously in the service his pay would have been $22 a month as a private, or $31 as first sergeant; at the time of his discharge he was drawing pay for over twenty years' service. He has been in the Fourth Cavalry since its organization, and has always borne an excellent reputation. The circumstances under which he was discharged were unusually trying; and it seems hard that a soldier of his service and character should be deprived of the benefit of his long and excellent service.

Your committee therefore recommend the passage of the accompanying bill, as amended (S. 1749), for his relief, which simply is intended to give him the pay and allowances he would be entitled to if his service had been continuous and uninterrupted by his discharge.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 592.

# IN THE SENATE OF THE UNITED STATES.

MAY 17, 1882.—Ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 910.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 1080) for the relief of Bayse N. Westcott, have had the same under consideration, and beg leave to submit the following report:*

The bill proposes to authorize the President of the United States to restore Bayse N. Westcott, now a commander on the retired list, to his original position on the Navy Register.

Your committee find from the papers furnished it by the Navy Department that Bayse N. Westcott is now a commander on the retired list of the United States Navy, will be sixty-two years of age in November next, and is a native of New Jersey. He entered the service of the United States on the 5th day of December, 1837, performed fifteen years effective sea-service and eight years of shore duty making a total service of active duty of twenty-three years, and was placed on the retired list on the 14th of May, 1863, by a retiring board organized pursuant to the twenty-third section of the act of August, 3, 1861, entitled "An act for the better organization of the military establishment," for the reason, as alleged by said board, that the said Bayse N. Westcott "was incapacitated for active service."

Commander Westcott remonstrated against the finding of this board, on the ground that its action was in conflict with the law and the facts, according to the evidence for the consideration of the retiring board. Since the date of his retirement he has asserted his claim to restoration to the active list, on the ground that he was mentally, morally, and bodily capacited for the faithful and effective discharge of *any* professional duty that may be assigned him, which claim has been fully recognized by the Navy Department by assigning him, since his retirement, to various positions of importance and trust on the active list, until the passage of the act of March 3, 1873, which provided that "no officer on the retired list of the Navy shall be employed on active duty, except in time of war," which, of course, precluded him from further service.

The following is an abstract of the record of service of Commander Bayse N. Westcott:

Appointed midshipman December 5, 1837.
January 16, 1838, ordered to the Erie.
July 7, 1838, detached from the Erie and waiting orders.
September 3, 1838, ordered to the Levant.

January 2, 1839, warranted as midshipman.
February 15, 1840, detached from Levant and granted three months' leave.
May 16, 1840, ordered to the steamer Poinsett.
December 30, 1840, detached and ordered to receiving ship at Norfolk.
December 31, 1840, ordered to Mediterranean squadron.
June 3, 1841, detached from Brandywine and granted three months' leave.
September 7, 1841, ordered to Flirt.
August 3, 1842, detached and ordered to naval school.
May 10, 1843, ordered to examination.
June 20, 1843, to the Independence.
July 12, 1843, warranted passed midshipman from June 29, 1813.
December 12, 1843, to the Potomac.
July 14, 1844, transferred to Somers.
October 25, 1844, appointed acting master.
November 12, 1845, detached from Somers and granted three months' leave.
April 8, 1846, ordered to receiving ship at Philadelphia.
November 21, 1846, detached and to steamer Hunter.
August 31, 1847, returned from home squadron sick.
October 19, 1847, ordered to Supply as acting master.
December 9, 1848, detached and granted three months' leave.
March 3, 1849, to Philadelphia rendezvous.
May 20, 1850, detached and to Coast Survey.
October 24, 1850, warranted as master from October 18, 1850.
November 26, 1850, detached and waiting orders.
January 13, 1851, to the St. Lawrence.
August 14, 1851, detached and three months' leave.
September 26, 1851, commissioned lieutenant from June 11, 1851.
November 5, 1851, leave extended.
April 3, 1852, to Coast Survey.
May 11, 1852, to the Corwin.
July 21, 1853, detached and to Coast Survey Office.
November 17, 1853, detached and ordered to Corwin.
October 25, 1854, detached and ordered to Walker.
November 29, 1854, detached and waiting orders.
May 24, 1855, to the Congress.
February 26, 1857, detached from the Congress.
November 27, 1857, appointed light-house inspector.
September 15, 1859, detached and ordered to hold in readiness for sea-service.
November 1, 1859, to Water Witch.
November 8, 1859, detached by request and waiting orders.
December 1, 1859, to Saginaw.
December 14, 1860, detached by Commodore Stribling.
May 29, 1861, ordered to Santee.
May 14, 1863, placed on retired list on furlough pay.
July 12, 1864, court-martial duty.
July 1, 1865, detached from that duty.
April 4, 1867, commissioned as commander on the retired list, having been promoted under act of March 2, 1867, in common with all other officers on retired list.
July 2, 1867, ordered as warrant officer, &c., to navy-yard, Pensacola.
December 13, 1867, detached from naval duties and ordered to navy-yard, Pensacola.
May 29, 1869, Detached from navy-yard, Pensacola, and waiting orders.
October 15, 1869, ordered as light-house inspector, sixth district.
September 13, 1870, detached October 1, and waiting orders.
No further orders.

This record is a very creditable one, shows the efficient services performed by him, and proves very conclusively, in the estimation of your committee, that he was not, at the date of his last service, in November, 1861, in the slightest degree incapacitated from active service as alleged by the retiring board in its finding. After a very careful examination of the proceedings of the retiring board relative to this case, and its finding upon the points presented for its consideration by the department, relating to the general fitness of this officer for active duty, your committee are of opinion that the evidence adduced was conclusively in his favor as to his physical, mental, moral, and professional standing, and they cannot understand, in view of the very strong and satisfactory testimony in his favor, upon what principle the board arrived at its conclusion that this officer was incapacitated for active service.

In support of this finding it will be seen that the Navy Department disregarded the opinion of this board that Commander Westcott was incapacitated for the discharge of active duty by assigning him to very important active duty thereafter. His first active duty after being placed on the retired list was that of a member of a court-martial held at the Brooklyn navy-yard, New York, the duties of which he discharged from July, 1864, to March, 1865.

In July, 1867, he was ordered to the Pensacola navy-yard as equipment and navigation officer, and on the 11th of September, 1867, he was ordered to take command of the navy-yard at Pensacola, Fla., and continued in command until the 27th of November, 1867, when the commandant, whom he had relieved, returned to his post, whereupon Commander Westcott was detached as equipment and navigation officer, and assigned to duty as the executive officer of the navy-yard, the duties of which he discharged until the 20th of May, 1869.

On the 15th of October, 1869, he was ordered as United States inspector of the sixth light-house district, with headquarters at Charleston, S. C., extending from Wilmington, N. C., to Cape Canaveral, Fla., which district he thoroughly reconstructed, and performed the duties appertaining to his trust to the entire satisfaction of the Light-House Board, and remained in the discharge of such duty until he was placed on waiting orders, agreeably to the provisions of the act of March 3, 1873.

From the above facts it is clearly shown that manifest injustice was done Commander Westcott by depriving him of his position on the active list.

Accompanying the bill in support of his restoration to the active list, are strong testimonials from his family physician, the Army surgeon of the post, and the rector of his church, as to his present physical and mental condition, as well as to his moral standing in the community in which he resides. They certify that he is now, and has been, a person of sound, vigorous health, in body and mind, and fully competent to discharge the active duties of his profession; which statements are fully corroborated by prominent officers of the United States, military and civil, as also by citizens of standing in the community in which he resides.

In considering the facts in relation to the application of this officer the committee cannot but conclude that great injustice has been done Commander Westcott, and that the action of the department, placing him on the retired list, was in conflict not only with the spirit but the intent of the act of August 3, 1861.

Your committee are, therefore, satisfied that this officer, at the date of his retirement, was not incapacitated for active duty, and has not been since the date thereof. There being no legal impediment in the way of his restoration to the active list of the Navy—not having served forty-five years, nor attained the age of sixty-two years—they respectfully report the bill back to the Senate and recommend its passage.

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47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 593.

IN THE SENATE OF THE UNITED STATES.

MAY 17, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on Claims, submitted the following

# REPORT:

*The Committee on Claims, to whom was referred the petition of James B. Crank and George Hoffman for compensation for use and occupation of their property by the Army during the war, have considered the same, and respectfully report:*

It appears from affidavits filed in this case that in May, 1864, the claimants took from one David Christie an assignment of his lease of a church building on Twenty-second street, near G, in the northwest section of this city, which was then and afterwards used as a bakery and drinking saloon. The lease had then about two years and six months to run. It does not clearly appear whether Christie or his wife continued to carry on the business, or whether the claimants undertook it themselves. There is no document or statement showing what the rent paid for the property at that time was, but a lease of the premises to one of the claimants in 1871 is among the evidence, in which the yearly rental is fixed at $125.

In August, 1864, the building caught fire, but was not destroyed. The military officer in charge of that quarter advised his superiors that the occupation of the building as a bakery was a standing menace to large quantities of government supplies stored in a warehouse near by. The proper authorities thereupon ordered the closing of the shop, and it remained idle for about two years.

The claimants now ask to be allowed $10,000 a year for the rent of the establishment during those two years. They applied to the Quartermaster-General in 1867, asking for something over $14,000 in all, instead of $20,000, which they now claim. Their claim was rejected. In 1876 they applied to the Treasury Department, and were refused on the ground that the claim was for unliquidated damages, over which the accounting officers had no jurisdiction. They now apply to Congress for the first time, more than five years after their claim was rejected by the Third Auditor.

There is no evidence whatever to show why the property which was rented for $125 in 1871 should have been worth $10,000 a year in 1864, just after a fire had injured it to some extent. There are affidavits which assert that they were doing a very good business at the saloon, and that $10,000 was a fair yearly valuation. This is remarkable, also, in view of the fact that that section of the city was then comparatively unsettled.

Your committee are of the opinion that, as the closing of the building

was deemed a military necessity, the claimants are not entitled to compensation; that they have proved no loss equal to the amount they claim; and that they have been guilty of laches in the prosecution of their claim.

The committee therefore recommend that the prayer of the petitioners be not granted, but that its consideration be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 594.

# IN THE SENATE OF THE UNITED STATES.

MAY 17, 1882.—Ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Naval Affairs submitted the following

# REPORT:

[To accompany S. R. 61.]

*The Committee on Naval Affairs, to whom was referred the joint resolution (S. R. 61) tendering the thanks of Congress to and conferring additional rank on Chief Engineer George W. Melville, United States Navy, and for other purposes, having had the same under consideration, beg leave to submit the following report:*

Your committee ask to be discharged from the further consideration of this resolution, and recommend its indefinite postponement, for reasons set forth in the following letter from the Secretary of the Navy:

NAVY DEPARTMENT,
*Washington, May* 13, 1882.

SIR: I have the honor to acknowledge the receipt of your communication of the 12th instant, inclosing a copy of joint resolution (S. R. 61) tendering the thanks of Congress to and conferring additional rank on Chief Engineer George W. Melville, United States Navy, and for other purposes, and requesting the opinion of the department regarding the propriety of enacting this resolution into a law.

The resolution proposes to confer upon Chief Engineer Melville a special vote of thanks of Congress, to advance him in rank forty numbers on the list, into the next higher grade, and to confer upon him a sum of money, amount not named.

While it is believed by the department that Chief Engineer Melville has done all in his power for the rescue of his shipmates, the information from all sources with regard to the search for Lieutenant-Commander De Long and his companions is so limited that I cannot recommend the passage of the resolution at this time, but respectfully suggest that no action be taken until the next session of Congress, by which time full information will have been received and intelligent action can be had.

I am, very respectfully,

WM. E. CHANDLER,
*Secretary of the Navy.*

Hon. J. D. CAMERON,
*Chairman Committee on Naval Affairs, United States Senate.*

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47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 595.

# IN THE SENATE OF THE UNITED STATES.

MAY 17, 1882.—Ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 879.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 879) authorizing the President of the United States to reappoint Stephen A. McCarty a lieutenant-commander in the Navy, having had the same under consideration, beg leave to submit the following report:*

A joint resolution authorizing the President of the United States to reappoint Lieutenant-Commander McCarty in the Navy, was favorably reported by your committee at the last session of Congress, and it passed the Senate. It failed to pass the House simply for want of time, the joint resolution having been sent over to that body towards the closing hours of the session.

The petition of Lieutenant-Commander McCarty was before this committee in the Forty-fifth Congress, and they reported upon it adversely. This action your committee now think was not fully warranted by the facts of the case as they appear of record. On account of the great amount of business at the closing hours of the session the action of the committee was necessarily hasty, as is apparrent from the fact that no printed statement accompanied the report at that time, and therefore the grounds upon which the adverse report was based do not appear. The case, in the opinion of this committee, is one which commends itself to the justice and leniency of Congress.

Stephen A. McCarty is a citizen and resident of Pulaski, Oswego County, N. Y., and is about thirty-nine years of age. He entered the United States Navy as a midshipman in 1856. In 1862 he was promoted to a lieutenancy, and in 1866 was appointed a lieutenant-commander. He held this commission until 1874, at which time he had been in the service eighteen years, and, until within a brief period before, had discharged and fulfilled, to the entire satisfaction of the department and the officers in immediate command, every official duty and requirement of his position. Unfortunately, while he was attached to the United States steamer Powhatan, he was said to have been under the influence of liquor on several occasions, for which offense he was tried by a court-martial and found guilty; but the members of the court, however, recommended him to the clemency of the Secretary, with but one exception, and in deference to that recommendation the sentence was remitted by the Secretary of the Navy.

Some months later he again took to drinking, and charges were again preferred against him, pending the trial of which he resigned his commission. He gave his reasons for this action in a letter to the Secretary of the Navy, dated January 13, 1879, as follows:

> I resigned while a charge of intoxication was pending against me, and, although I was confident then, as I am now, that the specific charge alleged could not be sus-

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 595.

# IN THE SENATE OF THE UNITED STATES.

MAY 17, 1882.—Ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 879.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 879) authorizing the President of the United States to reappoint Stephen A. McCarty a lieutenant-commander in the Navy, having had the same under consideration, beg leave to submit the following report:*

A joint resolution authorizing the President of the United States to reappoint Lieutenant-Commander McCarty in the Navy, was favorably reported by your committee at the last session of Congress, and it passed the Senate. It failed to pass the House simply for want of time, the joint resolution having been sent over to that body towards the closing hours of the session.

The petition of Lieutenant-Commander McCarty was before this committee in the Forty-fifth Congress, and they reported upon it adversely. This action your committee now think was not fully warranted by the facts of the case as they appear of record. On account of the great amount of business at the closing hours of the session the action of the committee was necessarily hasty, as is apparrent from the fact that no printed statement accompanied the report at that time, and therefore the grounds upon which the adverse report was based do not appear. The case, in the opinion of this committee, is one which commends itself to the justice and leniency of Congress.

Stephen A. McCarty is a citizen and resident of Pulaski, Oswego County, N. Y., and is about thirty-nine years of age. He entered the United States Navy as a midshipman in 1856. In 1862 he was promoted to a lieutenancy, and in 1866 was appointed a lieutenant-commander. He held this commission until 1874, at which time he had been in the service eighteen years, and, until within a brief period before, had discharged and fulfilled, to the entire satisfaction of the department and the officers in immediate command, every official duty and requirement of his position. Unfortunately, while he was attached to the United States steamer Powhatan, he was said to have been under the influence of liquor on several occasions, for which offense he was tried by a court-martial and found guilty; but the members of the court, however, recommended him to the clemency of the Secretary, with but one exception, and in deference to that recommendation the sentence was remitted by the Secretary of the Navy.

Some months later he again took to drinking, and charges were again preferred against him, pending the trial of which he resigned his commission. He gave his reasons for this action in a letter to the Secretary of the Navy, dated January 13, 1879, as follows:

I resigned while a charge of intoxication was pending against me, and, although I was confident then, as I am now, that the specific charge alleged could not be sus-

tained, still I was by that circumstance brought to face my actual condition. Fully realizing that the intemperate habits which I frankly and with deep regret confess I had contracted rendered me liable to similar difficulties sooner or later, I believed it to be of paramount importance to my future welfare to reform absolutely, and that I could more effectually and thoroughly accomplish this by leaving the Navy. My sole motive in resigning was to make myself more fit to hold my position, with a view of asking for restoration to the service when the temporary physical and mental disability had been removed.

Although the cause which led to his resignation is very much deprecated by your committee, still it does not appear from the records that he grossly neglected his duty, or that any palpable injury resulted to the service therefrom. When his eighteen years of faithful and efficient service in the Navy are taken into consideration—having served through all the dangers of the late war, taking part in the principal engagements of Admiral Farragut's fleet, and being wounded at the battle of Mobile—and the fact that up to two years of his resigning no report or complaint was ever made against him or to his discredit, your committee cannot but feel inclined to overlook the unfortunate circumstance of his drinking (which after all seems to have been with him more of a misfortune than an inveterate habit or fault), particularly as he has since his resignation entirely and completely reformed. This fact is borne out by the following testimonial from citizens of the town in which Mr. McCarty resides:

*To the Senate and House of Representatives of the United States:*

The petition of the undersigned citizens, inhabitants of the county of Oswego, New York, respectfully represents:

That they are personally acquainted with Stephen A. McCarty, late a lieutenant-commander in the United States Navy, who for the last few years has been a resident of Pulaski, in the said county; that during the time of his residence here, for the last two years or more, his character and conduct in every respect have been correct and exemplary, and particularly in respect to his sobriety and firmness in habits of temperance. In view of his education and training in the Navy and his services as an officer, and his entire freedom and emancipation from the unfortunate circumstances which induced his withdrawal, we earnestly recommend his restoration to the position for which he is so well fitted by education, training, and experience. We ask, therefore, that such act or resolution may be passed as will authorize his restoration to the service, for which he is so well qualified and competent in every respect.

Pulaski, Oswego County, New York, January, 1879.

W. B. DIXON,
*Supervisor of the Town of Richland.*
FRANK S. LORD, M. D.,
*Late Sheriff of Oswego County.*
E. A. KING,
*Attorney and Counselor at Law.*
JAMES M. FENTON,
*Justice of the Peace.*
JNO. B. WATSON,
*Justice of the Peace.*
NATHAN B. SMITH,
*Attorney and Counselor at Law.*
SEBASTIAN DUFFY,
*Principal of Pulaski Academy.*
L. R. MUZZY,
*Editor and Proprietor Pulaski Democrat.*
M. B. COMFORT,
*Pastor Baptist Church, Pulaski.*
ROBERT PAUL,
*Rector of Saint James Church, Pulaski.*

I personally know each and every the gentlemen whose names are signed hereto (on this half sheet), and have for many years, and vouch for the high standing and respectability of each and every one of such signers. I unite with them in recommending that Mr. McCarty be reinstated in the Navy.

W. H. BAKER.

The following two letters, from his superior officers, show his conduct while under their immediate command:

COMMANDANT'S OFFICE,
UNITED STATES NAVY-YARD, LEAGUE ISLAND, PA.,
*December* 17, 1878.

DEAR SIR: I received your note of 10th instant, and am glad to hear from you and that you have entirely reformed, and that for nearly three years you have been strictly temperate; and so long as you adhere to strictly temperate habits, you will triumph over the only barrier that I know of to your success in life.

Aside from this objection, during the time you were under my command, on board the United States steamer Powhatan, I found you to be a very capable and useful officer. I am always glad to give a helping hand to deserving people; to encourage those who are determined to do right; and you have my earnest wishes for your success and prosperity.

Very respectfully, yours,

PEIRCE CROSBY.

S. A. MCCARTY,
*Washington, D. C.*

UNITED STATES NAVY-YARD, WASHINGTON,
COMMANDANT'S OFFICE,
*December* 6, 1878.

SIR: In reply to your verbal request, I have the pleasure of stating that while under my command as navigating officer of the United States steamer Shenandoah your conduct in every respect as officer and gentleman was such as to merit my approbation.

Very respectfully, your obedient servant,

JNO. C. FEBIGER,
*Commodore United States Navy.*

Mr. S. A. MCCARTY.

The Secretary of the Navy, in answer to a letter written to him by the former chairman of this committee, made the following reply, which gives a full history of the case:

NAVY DEPARTMENT,
*Washington, January* 13, 1879.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, inclosing the memorial of Stephen A. McCarty for the passage of an act or joint resolution authorizing the President to restore him to his position of lieutenant-commander in the Navy, and asking that the Naval Committee, to which the memorial has been referred, may be furnished with such information and the cause of his leaving the naval service as the records of the department contain; also, with any recommendation I may think proper to make.

Stephen A. McCarty entered the Navy as a midshipman September 25, 1856; was promoted to a lieutenant August 1, 1862, and to a lieutenant-commander August 9, 1866, and resigned November 7, 1874.

He was in the Navy upwards of eighteen years; was at sea over ten years of that time; was on shore duty about three years, and on leave or waiting orders about five years.

So far as the records show, his service was well performed and his general conduct and deportment good, until about September, 1872, when, while attached to the United States ship Powhatan, he was reported to have been under the influence of liquor on three or four separate occasions within a short period. Charges were preferred, and he was tried by court-martial September 30, 1872. The court found him guilty, but all the members, with a single exception, recommended him to clemency.

The Secretary of the Navy, on the 24th of February, 1873, remitted the sentence, writing to him as follows:

"The members of the court by which you were tried, with one exception, unite in earnestly recommending you to clemency, on the ground that the misconduct which has placed you in your present position was a 'temporary abberration from the very high professional reputation you have heretofore borne.' You were guilty of grave infractions of discipline, but the recommendation of the members of the court, themselves officers of experience and high professional reputation, is entitled to great weight, and the department would with the utmost reluctance, for a first offense, and that involving no grave moral turpitude, deprive an officer of a high professional reputation of the fruits of years of uniformly good and exemplary conduct. I have concluded, therefore, to yield to the recommendation in your behalf and remit the sentence of the court."

In November, 1874, the commander-in-chief of the North Atlantic Station preferred charges against Lieutenant-Commander McCarty, then executive officer of the Canandaigua, of drunkenness and neglect of duty, and brought him before a court-martial

for trial. The department finds from the record of these charges that, while the ship was at anchor at New Orleans, he became so much under the influence of liquor as to be unfit for the performance of his duty, and not in a fit condition to receive the commanding officer of the vessel on his return to the ship. After the court was organized and were about to proceed to the trial, Lieutenant-Commander MCarty tendered his resignation; and the commander-in-chief stating that he saw no objection to its acceptance, it was accepted, and his connection with the service ceased.

There appears to have been nothing else that would have interfered with the further usefulness and future successful career of Lieutenant-Commander McCarty than his occasional overindulgence in intoxicating liquors, and these instances were only during the last two years of his service in the Navy. His reputation prior to that time was good for sobriety and for efficient and faithful discharge of duty. He possesses many traits of character which commend him to those in and out of the service.

He now presents and places on file statements from citizens of high character and standing—associates and neighbors who have observed his conduct—as to his complete reformation, and that he has abstained from the use of any intoxicating liquors for two or three years past.

He feels deeply the loss of a position which he had reached after so many years of faithful service, and is anxious to have the opportunity of proving himself as worthy of further trust and confidence.

Under all the circumstances, the department thinks that the prayer of the petitioner for relief might be granted. But in view of the claims of others in the service, and upon the principle that an officer who has sacrificed his position and rank by his own misconduct should not have them fully restored by legislation, I would suggest that the President be authorized to nominate and, by and with the advice and consent of the Senate, appoint him a lieutenant-commander in the Navy, but to take present position at the foot of the list of officers of that grade. He was No. 19 on the list of lieutenant-commanders when he resigned, and would have been about seventeen numbers from the foot of the list of commanders had he continued in service.

I am, sir, very respectfully,

R. W. THOMPSON,
*Secretary of the Navy.*

Hon. A. A. SARGENT,
*Chairman of the Committee on Naval Affairs,*
*United States Senate, Washington, D. C.*

Your committee, therefore, taking all the attendant circumstances into consideration, his previous good reputation, his long and honorable career in the United States Navy, and his subsequent total reformation and good behavior, attested by his neighbors and fellow-citizens, concur in the recommendation of the Secretary of the Navy, and beg leave to report the bill back to the Senate favorably, without amendment, and recommend its passage.

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[Appendix.]

*To all whom it may concern:*

I hereby certify that I have not tasted, drank, or used any spirituous or malt liquors, wine, or cider, or any intoxicant since A. D. 1876, a period of nearly six years, and that since that time I have been strictly and wholly abstinent.

STEPHEN A. McCARTY.

Subscribed and sworn to before me this 14th day of February, 1882.
[SEAL.] FRED. W. PRATT,
*Notary Public.*

I cheerfully certify to the truth of Mr. McCarty's statement, from my own personal and almost daily observation of him during the greater part of the time specified.

WM. J. MURTAGH.

Subscribed and sworn to before me this 14th day of February, 1882.
[SEAL.] FRED. W. PRATT,
*Notary Public.*

I most cheerfully and truthfully can say, having known Mr. McCarty the past three years, that he is one of our few teetotal men of this District.

HENRY D. BARR,
1111 *Pennsylvania Avenue.*

Subscribed and sworn to before me this 14th day of February, 1882.
[SEAL.] FRED. W. PRATT,
*Notary Public.*

47TH CONGRESS, 1st Session. | SENATE. | REPORT 595, Part 2.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. ROLLINS, from the Committee on Naval Affairs, submitted the following

## VIEWS OF THE MINORITY:

[To accompany bill S. 879.]

The bill authorizes the President to reappoint Stephen A. McCarty a lieutenant-commander on the active list of the Navy, to take position at the foot of the list of officers of that grade.

Stephen A. McCarty was appointed a midshipman September 25, 1856; was promoted to lieutenant August 1, 1862; and received a commission as lieutenant-commander August 9, 1866.

While attached to the United States steamer Powhatan, September 30, 1872, he was tried by a naval general court-martial on a charge of drunkenness, found guilty of the charge, and sentenced to be dismissed from the Navy.

The members of the court, with one exception, having recommended Lieutenant-Commander McCarty to clemency, on the ground that his misconduct was a "temporary abberation from the very high professional reputation he had before borne," the Secretary of the Navy remitted the sentence of the court.

Prior to the above trial by court martial, Lieutenant-Commander McCarty had violated a written pledge given to his commanding officer, to the effect that he would abstain from the use of intoxicating liquors while under his command.

In November, 1874, the commander-in-chief of the North Atlantic squadron preferred charges of drunkenness and neglect of duty against Lieutenant-Commander McCarty, who was serving as executive officer of the United States steamer Canandaigua.

After the court had been organized and was about to proceed to the trial of Lieutenant Commander McCarty he tendered his resignation, which was accepted, and his connection with the Navy ceased.

During the past three years Mr. McCarty has been endeavoring to obtain restoration to the Navy by means of an act of Congress, and should the bill (S. 879) become a law great injustice will be inflicted upon 280 lieutenants, 100 masters, and 300 ensigns and midshipmen, who are in good standing in the Navy, and have not been guilty of misconduct, but whose promotion will be temporarily stopped by the reinstatement of Mr. McCarty, who was once sentenced to dismissal by court-martial for drunkenness, after having violated a written pledge given to escape trial; and who, in spite of the clemency shown him, again conducted himself in such a manner that a resignation was the only escape from dismissal by sentence of a court-martial.

Section 1441 of the Revised Statutes of 1878 provides that no officer

who has been dismissed by the sentence of a court-martial, or suffered to resign in order to escape such dismissal, shall ever again become an officer of the Navy.

It is assumed, from the fact that Mr. McCarty resigned after the court-martial had been convened, that he did it to escape the dismissal which would have followed the trial and have disqualified him for restoration, under the act of 16th July, 1862. (Section 1441 Revised Statutes, 1878.)

The relief granted in the bill (S. 879) will be but a temporary one; and, judging from precedent, at the next session Congress will be asked to restore Lieutenant-Commander McCarty to his original position on the Navy list, which will be equivalent to promoting him one grade and advancing him over the heads of 150 officers more deserving than he.

We therefore recommend that the bill do not pass, and that the same be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 596.

# IN THE SENATE OF THE UNITED STATES.

MAY 19, 1882.—Ordered to be printed.

Mr. MAHONE, from the Committee on Post-Offices and Post-Roads, submitted the following

# REPORT:

[To accompany bill S. 1905.]

*The Committee on Post-Offices and Post-Roads, to whom was referred the petition for the relief of M. C. Mordecai, having had the same under careful consideration, beg leave to report as follows:*

That in the year 1848 M. C. Mordecai and others were the owners of the steamer Isabel, a steamship built with reference to and for the purpose of carrying the United States mails from Charleston, S. C., *via* Savannah, Ga., and Key West, Fla., to Havana, in the Island of Cuba; that from 1848 to 1859 the said M. C. Mordecai, under a contract with the Postmaster-General and by authority of Congress, carried said mails to and from the above-named points for the contract-price of $50,000 per annum, except for the last five years of said term, for which they were paid $60,000 per annum; that prior to the expiration of said contract, to wit, March, 1859, provision was made, as in former years, in the Post-Office appropriation bill, for a renewal of contract, but the entire bill failed to pass both houses, and Congress adjourned without making any provisions whatever for the support of the mail service of the country.

At the expiration of his contract, June 30, 1859, M. C. Mordecai ceased carrying said mails, because of the failure of the passage of the usual appropriation for its support.

After the lapse of three months, namely, on October 1, 1859, at the earnest solicitation of the public, through petitions and appeals from the boards of trade, chambers of commerce, and merchants of all the principal Atlantic seaports, said M. C. Mordecai was induced, with the knowledge and consent of the Post-Office Department, to resume the carrying of said mails, intending, as stated in the memorial before your committee, to look to the subsequent action of Congress for compensation, the Postmaster-General not being authorized to contract for any compensation farther than the ocean and inland postages, which were entirely inadequate to compensate for the service rendered.

The evidence is abundant that the mails were carried regularly on said steamer twice a month, from October 1, 1859, to July 20, 1860, for which no compensation of any kind was received from any source.

In the Post-Office deficiency bill of 1860 provision was made by the House for a renewal of the former contract, and also for compensation for the service performed as aforesaid without contract. This latter provision passed the House on a test vote by 115 to 60. In the Senate the

entire paragraph was stricken out, and the Postmaster-General authorized to advertise in the usual manner and let the contract to the lowest bidder. This was done, and the petitioner was again awarded the contract, at $40,000 per annum, for the service from Charleston to Key West, and the ocean and inland postages for that part from Key West to Havana. By the alterations thus made in the Senate, provision for the service from October 1, 1859, to July 20, 1860, was omitted, but at the next ensuing session of Congress a bill was reported from the Committee on Post-Offices and Post-Roads allowing the petitioner compensation for said service at the rate of the last contract. On account of the disturbed condition of the country at that time, this bill never received consideration at the hands of Congress, and the petitioner, notwithstanding repeated efforts, has to this day received no sort of compensation for said service.

In view of all the evidence presented, it appears that the service upon this route had become at that time a most important branch of the mail service of the country, and the petitioner exhibited great liberality and contributed largely to the public convenience by yielding to the solicitations of the public and continuing the service in all its efficiency as had been done when under contract, and your committee are of the opinion that he is equitably and properly entitled to receive compensation therefor at the rate at which the contract was renewed when let to the lowest bidder after public advertisement, viz, at the rate of $40,000 per annum for the service from Charleston to Key West, and the ocean and inland postages from Key West to Havana.

For nine months and twenty days, the period covered by said service, at the rate of $40,000 per annum, would amount to $32,222.22, and the postages from Key West to Havana, computed upon the basis of the succeeding contract, $5,769.73; total, $37,991.95.

Your committee therefore report the accompanying bill providing for the payment of the above named amount, with the recommendation that it do pass.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 597.

# IN THE SENATE OF THE UNITED STATES.

MAY 19, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3539.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3539) to increase the pension of Mrs. Laura Hentig, have considered the same, and report:*

The House bill is identical with Senate bill 754, upon which your committee some time since made an unfavorable report, which was adopted by the Senate. The vote adopting the report was subsequently reconsidered by the Senate, and the Senate bill was referred to your committee for further consideration.

The report of the House Committee on Invalid Pensions, which sets out the facts of the case, in the main with accuracy, is as follows:

> The facts in this case are that Capt. Edmund C. Hentig was an officer of the United States Army, on duty with his regiment, the Sixth United States Cavalry, at Fort Apache, Arizona Territory. That on the 29th day of August, 1881, he formed, with his company, a part of the command under Col. E. A. Carr, commanding Sixth Cavalry, United States Army, which marched to Cibicu Creek, near the said Fort Apache, and on the 30th the command was surprised and attacked by hostile Apache Indians, who inflicted serious injury and loss of life upon said command; that at the beginning of the hostilities the said Captain Hentig was shot and instantly killed by said hostile Indians.
>
> Mrs. Laura Hentig, the widow of the said Captain Hentig, has been an invalid for several years, and, from the effects of malaria and the shock of her husband's sudden and cruel death, is suffering from complete nervous prostration; and it is in proof, as the opinion of W. M. Goodell, M. D., of the University of Pennsylvania, that in all probability she will never be able to earn a livelihood for herself or invalid daughter.
>
> Mrs. Hentig is poor, and her present pension of $20 per month is scarcely sufficient to pay for necessary medical attendance. In view of all the surrounding circumstances your committee regard this case as one involving unusual hardships. They would, therefore, recommend the passage of the bill granting a pension to Mrs. Laura Hentig at the rate of $50 per month.

This case is one of a very large class. A faithful officer, who had accumulated no property, lost his life from one of the dangers incident to the service. He left surviving him an invalid widow and daughter, who find that the pension of $20 a month, which the widow receives under the general law, affords them a very meager support.

In the opinion of your committee there is no propriety in increasing this lady's pension to $50 a month, unless Congress is prepared to grant a like increase of pension to all widows of captains and officers of higher grades who are poor and in broken health, and whose husbands lost their lives in battle. Such increase, if granted at all, should be by a

general act, and not by a vast number of special acts, and would ve greatly enlarge the amount to be annually paid out for pensions.

Your committee, therefore, cannot permit any sentiment of symp thy for a deserving lady to induce them to recommend the passage of bill which would create a very bad precedent. They therefore reco mend that bill H. R. 3539 be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 598.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 654.]

*The Committee on Pensions, to whom was referred the bill (S. 654) granting an increase of pension to Rebecca Reynolds, having considered the same, report as follows:*

William Reynolds, Rear-Admiral, U. S. N., husband of claimant, died November 5, 1879, after an active service of forty-eight years. His widow was pensioned from the date of his death at the rate of $30, the rate allowed by law.

In consideration of the long and faithful service of Rear-Admiral Reynolds, and in view of the fact that in several instances the pensions of the widows of rear-admirals have been increased to $50 by special acts, the committee recommend the passage of the bill with an amendment.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 599.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5809.]

*The Committee on Pensions, to whom was referred the bill (H. R. 5809) for the relief of Jacob Humble, having considered the same, report as follows:*

The facts are correctly set forth in the report of the House Committee on Invalid Pensions (No. 1048), as follows:

Jacob Humble was a private in Company F, Sixth Indiana, and served a three years' enlistment as such. Near Atlanta, Ga., he was taken prisoner in July, 1864, and was confined at Andersonville and in other prisons until March, 1865, when he was paroled and ordered to the prison camp at Camp Chase, Ohio. While there he met with a severe accident by the falling of his bunk, situated in the barracks at said camp, by which his spine was injured, and from which he has never recovered. For six years past he has been unable to stand and has not left his bed. On or about the 1st day of August, 1879, he made out an application for an invalid pension on account of said injury, and delivered the same to his neighbor, Dr. William Williams, to be by him delivered to his attorneys, McKnight & Johnson, at Spencer, Ind., with instructions to file the same at once in the Pension Office. These papers did not reach the Pension Office, and the said Humble was not informed of that fact until in the year 1881, about two years after he had, as he supposed, complied with the requirements of the law by which he would be entitled to the arrears.

Humble files his affidavit, stating that he made out his application on or about the 1st day of August, 1879, and delivered the same as aforesaid to Dr. William Williams to be delivered by him to his aforesaid attorneys at Spencer. Franklin R. Drake swears that he saw said Humble at said time so deliver said application to said Williams. Dr. Williams swears that he did on said day so deliver the said application with said instructions; that he saw one of said attorneys, Alex. McKnight, at once place said declaration in an envelope, seal it, and start in the direction of the post-office, and in a few minutes thereafter the said McKnight informed him that he had mailed the same. McKnight testifies that he did at that time duly stamp and regularly mail said declaration as he was instructed to do; that it was plainly directed to the Commissioner of Pensions, Washington, D. C., and that neither he nor his partner were informed that the same had not reached the Commissioner aforesaid until in the year 1881.

It appears to be as certain as human testimony can make any fact that this declaration was lost in the mails in some way; that the soldier was not in any fault; that he complied with every requirement of the law; that it was then notorious that the adjudication of pension cases was greatly delayed, and for that reason he might rightly have remained silent for so long a time, expecting that his claim would be settled in due course of business in said office when it could be reached; that this soldier was then in such a condition of physical health that he could not leave his bed, and in fact so remains. For all these reasons your committee believe that he is entitled to the relief he asks, and therefore report the accompanying substitute bill, and recommend that it do pass.

The committee report back the bill without recommendation.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 600.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1462.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1462) granting a pension to Lewis Blundin, having examined the same, make the following report:*

Your committee find the facts of this case correctly set forth in Report No. 946 of the House Committee on Invalid Pensions, made at the present session of Congress, as follows:

The petition of Lewis Blundin sets forth that he enlisted in Company C, Twenty-eighth Pennsylvania Volunteers, on July 20, 1861, and was mustered out by reason of expiration of term of service on July 20, 1864; that he again enlisted on March 20, 1865, in Company C, First Army Corps, Third United States Veteran Volunteers, for one year. and was discharged March 29, 1866, on expiration of term of service.

He now claims pension by reason of disability incurred in the service and in line of duty; that his disability is paralysis and chronic rheumatism, the result of exposure, and an attack of typhoid fever; that he was treated for said fever and rheumatism in 1864 in a field hospital near Resaca, Ga.

The records of the War Department show service as above claimed, but furnish no evidence of his disability.

John E. Littleton makes affidavit that he was a lieutenant in Company C, Twenty-eighth Pennsylvania Volunteers; swears claimant was disabled about May 15, 1864; that from want of shelter, and from exposure, Blundinc ontracted typhoid fever; was a patient in field hospital; was returned to duty, and by reason of his weakened condition and exposure was attacked with rheumatism, and again became a patient in the field hospital. The affidavits of five witnesses show their acquaintance to have extended over a period of fifteen years prior to the filing of the claim; were his neighbors; knew him to be a perfectly sound and healthy man at the date of his first enlistment; that on his return home after first discharge he was greatly changed and complained of rheumatism; told affiants that he contracted disability in the service; that his health having somewhat improved he again entered the service and returned a broken-down man; informed affiants that he had not been able to perform manual labor, and since 1868 has been the worst cripple affiants ever saw; even is an object of pity.

William C. Todd, M. D., makes affidavit that his knowledge of claimant dates from March, 1868; that he finds paralysis of left side, lower part of body, and visceral organs; that he is incapable of performing manual labor; disability caused by chronic inflammation of the spinal cord, which may have been the result of exposure in the United States Army.

W. H. G. Griffith, M. D., makes affidavit that he has treated claimant professionally since December, 1870, for paralysis of left side and visceral organs; believes the disability originated from sickness, medical maltreatment, and exposure while in the United States Army; his habits good and temperate.

Samuel Lovett, examining surgeon, reports disability, resulting from typhoid fever, paralysis, rheumatism, and spinal disease; in his opinion disability originated in the

service; that one side of claimant is useless; the sphincter muscles of the anus and bladder are also paralyzed; has no control over their functions; has rheumatic symptoms; affection of spine is the result of fever.

The records of the field hospital are not on file in office of Surgeon-General. Claimant is unable to discover the regimental surgeon.

The committee are of the opinion that the bill should pass, and they therefore recommend the passage of the bill, as amended.

Upon this report the House passed the bill for the relief of Blundin. Your committee concur in this action, and recommend the passage of the bill by the Senate.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 601.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 259.]

*The Committee on Pensions, to whom was referred the bill (S. 259) for the relief of Samuel C. Van Honton, having examined the same, make the following report:*

That said Van Honton enlisted in the service of the United States on the 7th December, 1861, as a private in Company E, Fourth Regiment New York Heavy Artillery, and was honorably discharged October 14, 1865. At the battle of Ream's Station, Va., he was wounded by a minie-ball in the right leg, which necessitated amputation of the leg about four inches from the body. Shortly after discharge he made application for pension on account of said disability. His claim was admitted in October, 1866, and he was allowed a pension at the rate of $8 per month, commencing October 14, 1865. It was then increased to $15 per month from June 2, 1866. Subsequently it was raised to $18 per month from June 4, 1872, and upon his application for further increase made in July, 1874, the pension was again raised to $24 per month from June 4, 1874.

Upon the passage of the act of Congress, approved March 3, 1879, giving $37.50 per month to pensioners who had been placed upon the pension-rolls for amputation of either leg at the hip-joint, the claimant again made application for an increase to the amount provided by said act. This application was rejected by the Commissioner, for the reason that, claimant's leg being amputated below the hip-joint, his case did not come within the provisions of said act of March, 1879. His proper rating was $24 per month, the amount he was then receiving. The present bill proposes to grant claimant the increase denied him by the Pension Bureau. No additional facts or circumstances are brought to the attention of your committee. The case stands before them just as it stood before the Commissioner, whose action is sought to be reviewed and reversed. Your committee have carefully examined the papers and evidence on file, and fail to discover any error in the ruling of the Commissioner, which simply follows the provisions of the general law, and no grounds for special relief are shown. It appears that claimant can wear an artificial limb, and, with the assistance of a crutch and cane, is able to walk and get about without any unusual inconvenience. Your committee see no reason for making the case an exception to the general law. They accordingly recommend that the bill be not passed, and that the same be indefinitely postponed by the Senate.

CONGRESS, } SENATE. { REPORT
Session. } { No. 602.

IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

ACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2877.]

*Committee on Pensions, to whom was referred the bill (H. R. 2877) for relief of Wm. M. Meridith, having examined the same, make the following report:*

It said Meridith entered the military service of the United States about August 6, 1862, as captain of Company E, Seventieth Regt Indiana Volunteers, and was honorably discharged at or near ta on the 12th August, 1864. On the 3d October, 1881, he filed plication in the Pension Bureau for invalid pension, alleging as sis of his claim that while in the service and on duty at Bowling , Ky., on or about the 25th day of September, 1862, "while act- officer of the day, he was injured by riding a hard-gaited horse h a manner that inguinal hernia resulted as a direct effect from forestated cause, and that said disability so increased from that orward that strangulation resulted in several instances, reduction accomplished with great difficulty." After this application was ted and the claim rejected in the Pension Office, the bill under leration was introduced in the House. It authorizes and directs ecretary of the Interior to date the application of said Wm. M. ith for a pension, as filed with the Commissioner of Pensions, on h day of June, 1880, and that in the adjudication of his said claim pension his declaration be treated as filed on said date. This re- asked on the following state of facts: The claimant, on or about th June, 1879, executed a declaration for invalid pension before erk of the court of Marion County, Indiana, which he intrusted attorney, Benjamin D. House, of Indianapolis, Ind., to be mailed Commissioner of Pensions. Said House testifies that on the fol- g day, June 26, 1879, said application was by him inclosed in an ope, securely sealed, and plainly directed to Hon. Jno. A. Bentley, issioner of Pensions, at Washington, D. C. This declaration reached the Pension Office. It was no doubt lost in its transmis- hrough the mails. It does not appear that Captain Meridith or torney, Mr. House, ever made any inquiry of the Pension Office to July, 1880, as to whether the application had been received, it shown when its loss was first discovered. Ordinary diligence l have suggested the propriety of making inquiry as to the safe l of a document of such importance. There was ample time be- June 26, 1879, the date of mailing the application, and 1st July,

1880, when the limitation under the arrears act expired, within which, by the exercise of ordinary prudence, such as business men usually employ in the common affairs of life, to have ascertained whether the document had safely reached the Pension Bureau, and, if not, to have supplied its place. Your committee have very grave doubts whether a party under such facts and circumstances is entitled to be relieved from the operation of a general law. But there is another aspect of the case which has an important bearing upon the question of passing this present bill. Before this bill was introduced in Congress, Captain Meridith's claim, under the application regularly filed in October, 1881, had been investigated by the Commissioner of Pensions, and on the 6th January, 1882, the same was rejected on the merits, for the reason that there was no disability from cause alleged.

This decision of the Commissioner was supported by the report of the Chicago board of examining surgeons, who examined the claimant on the 26th October, 1881, and certified that in their opinion Captain Meridith was not incapacitated for obtaining his subsistence by manual labor from the cause alleged. This board further state that "a truss is worn on the left abdominal ring, which thus bears evidence of pressure, but there is no symptom of inguinal hernia," and they accordingly gave him no rate of disability. It appears from the statements of comrades, officers, and regimental surgeons that the claimant was troubled with hernia of left side from the fall of 1862 to date of his discharge in August, 1864. It also appears from the affidavits of several comrades and acquaintances, filed in the case since the rejection of the claim by the Commissioner, that Captain Meridith was troubled to some extent with hernia during each of the years 1865, 1866, 1867, 1868, 1869, 1870, 1871, and 1872. But there is no evidence to show that he has suffered with the disease since 1872, and nothing to contradict the certificate of the Chicago examining board, which made the last examination of the case on 26th October, 1881, and reported no disability. There was clearly no error in the action of the Commissioner rejecting the claim on the ground stated. The additional affidavits since filed do not relieve that objection. But, aside from this, there is still another reason why this claim could not properly be allowed. There is no evidence establishing the fact that the disability complained of, even if it still continued to exist, had its origin in the service. The alleged hernia developed itself in little over a month after Captain Meridith's enrollment, while in camp at Bowling Green, Ky., before he or his company had seen or undergone any active or fatiguing service. "Riding a hard-gaited horse" for a few hours, while acting as officer of the day, is hardly sufficient to account for development of hernia so early in the service, it not appearing that he was examined and found to be sound at the time of enlistment. But even the riding of the "hard-gaited horse" is not established except by the claimant's own statements, which your committee consider insufficient evidence of material facts. Captain Meridith, under the decision of the Commissioner and in the opinion of your committee, not being entitled under the law to any pension, it would be wholly useless to pass the bill in question, even if it was not open to the very serious difficulties and objections above indicated.

Your committee, accordingly, recommend that the bill be not passed, but that the same be indefinitely postponed by the Senate.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 603.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 904.]

*The Committee on Pensions, to whom was referred the bill (S. 904) granting a pension to John M. Broome, having examined the same, make the following report:*

That said Broome was enlisted and mustered into the service of the United States on the 3d January, 1862, as leader of the band in the Twelfth Regiment Kentucky Volunteers. He was discharged in October, 1862, the band of the regiment being at that time informally mustered out. On the 8th April, 1879, he filed his application for invalid pension, alleging as the basis of his claim "that while in the service, in the State of Alabama, on or about 1st September, 1862, he was disabled as follows: Double hernia in the right and left side, contracted by blowing the musical instrument he used as leader of the band while in the line of his duty." He further states that he was not treated in any hospital.

In a subsequent affidavit, filed December 8, 1879, he states that about the time of the battle of Shiloh, two vacancies having occurred in the band, he was compelled to play beyond his strength, and in consequence became ruptured; that he paid but little attention to the disability at first, supposing it to be a mere swelling of the bowels, and that by means of injections and bathing he managed to keep on duty; that on the march to Tuscumbia, Ala., he grew much worse; that he did not know what was the matter with him, and being ashamed to show his person he failed to report to the surgeon; that on his arrival at Huntsville, and learning the band was to be mustered out, he thought of nothing but going home, and again omitted to report himself sick.

Since his discharge he appears to have pursued the occupation of school and music teacher, and editor of newspapers at various places. The physicians who treated him after his discharge, he says, are dead. It is shown by the examining surgeon that he is now afflicted with double inguinal hernia, necessitating the wearing of a truss. The Commissioner of Pensions rejected the claim for the reason that there was no record or other evidence of the *origin* of the disability in the service other than the claimant's own statement, nor any medical testimony as to claimant's condition at date of discharge. The claimant admits he can furnish no testimony on these points.

The action of the Commissioner in rejecting the claim was unquestionably correct. No additional evidence has been brought to the at-

tention of your committee in support of the relief which the present bill proposes to grant. In coming to Congress for special relief claimants should be required to establish by clear and satisfactory testimony other than their own statements the facts and circumstances alleged in support of their applications. That is not done in the present case, nor is any explanation whatever given for the long delay in making his original application to the Pension Bureau. In the opinion of your committee it would be establishing a dangerous precedent to pass the bill under consideration. The committee therefore recommend that the bill be not passed, but be indefinitely postponed by the Senate.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 604.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5703.]

*The Committee on Pensions, to whom was referred the bill (H. R. 5703) to increase the pension of Alban H. Nixon, having examined the same, make the following report:*

That said Nixon enlisted as a private in the Third Regiment Pennsylvania Volunteers on the 18th day of April, 1861, and was honorably discharged from that regiment on the 30th of June, 1861. He immediately began recruiting for the Eighty-fourth Regiment Pennsylvania Volunteers, and on the 17th of September, 1861, he again enlisted as a private in Company I, of said regiment. In May, 1862, he was promoted to second lieutenant. In January, 1863, he was promoted to first lieutenant, and on May 3, 1863, he was again promoted and commissioned captain of Company K, in said Eighty-fourth Regiment. On the 27th November, 1863, at the battle of Mine Run, Va., he received a flesh wound in the upper part of right arm, which was attended with no serious results, and unfitted him for duty but a short while, when he rejoined his command. At the battle of Cold Harbor, Va., on the 1st of June, 1864, he received a gunshot wound in the left arm near the wrist, which necessitated amputation several inches below the elbow. On the 10th October, 1864, a small portion of the bone was extracted, and in February, 1865, another small fragment of one of the bones of the arm was extracted by Dr. Bliss. This was the last operation performed, and left the arm amputated, as stated by the examining surgeons, about two inches below the elbow joint. He was honorably discharged from the service on the 15th November, 1864, and on the 1st December, 1864, he filed his application for invalid pension, stating as the basis of his claim "that he received a gunshot wound in the left forearm in action at Cold Harbor, Va., June 1, 1864, by reason of which the arm was amputated about two inches below the elbow." No disability was claimed as resulting from the wound in the right arm. The claimant was allowed a pension at the rate of $20 per month from November, 17, 1864.

In February, 1865, Nixon was employed in the Post-Office Department, and seems to have continued in that service up to the present time, on what salary does not appear. In August, 1877, the pensioner applied for increase, making in support of his application a statement as follows: "That my left arm is amputated within one and a half or two inches of the elbow, and that in consequence the elbow is stiff; that the disability is of the same nature, in my belief, as if the amputation was immediately

at or above the elbow. Since my discharge from the service an amputation was performed upon the same arm by Dr. Bliss, at Armory Square hospital, Washington, D. C., on or about 17th February, 1865, of which the government has no official record, as I was a civilian at the time, but which amputation shortened my arm and increased the nature of the disability." Upon examination and certificate of the examining surgeon, this application for increase was rejected by the Pension Bureau. On the 20th October, 1881, the pensioner made another application to the department for increase. He was again examined by a board of examining surgeons at Washington, who, under date of December 14, 1881, certified as follows: "The left arm has been amputated about two and a half inches below the elbow joint; stump somewhat tender; no grounds for increase. We find his disability as described above to be equal to and entitling him to total $20 per month." There was no evidence conflicting with this statement of the examining surgeons, and on February 1, 1882, the present Commissioner of Pensions rejected the application for increase, upon the ground that the claimant is now receiving the full amount of pension to which he is entitled under the law for his disability. The claimant then applied to Congress for relief, asking an increase to $36 per month, and the House, on the 8th of May, passed the bill under consideration, raising his pension to $30 per month. No additional evidence has been produced in support of this appeal to Congress, except the certificates of two officers of the Eighty-fourth Pennsylvania Regiment, to the effect that the claimant was a brave, faithful, and efficient officer. And the case stands here just as it did before the Pension Bureau at the date of its last rejection.

On reviewing the action of the Commissioner, your committee fail to discover any error whatever, and no such special circumstances are shown as would warrant them in making this case an exception to the general law. If special relief is granted in this case it can only rest upon the ground that the provisions of the general law are wrong. Impressed with the belief that the passage of the present bill would be the establishment of a mischievous precedent, your committee recommend that the bill be not passed, but that the same should be indefinitely postponed by the Senate.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 605.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1554.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1554) granting an increase of pension to Eliza Hudson, have considered the same, and respectfully report:*

That the claimant is the widow of the late William L. Hudson, a captain in the United States Navy, who died on the 15th October, 1862, of disease contracted in the service.

The claimant has been in receipt of pension of $30 per month since the death of her husband on 15th October, 1862, and the bill now asks that the pension be increased to $50 per month.

Your committee find that the rate of pension now received by the claimant is the full amount allowed by general law to the widow of a captain in the Navy, and are of the opinion that, notwithstanding the long service of the officer, there is no good reason why the claimant should be made an exception by special act to the general law governing similar cases.

Your committee cannot agree with the report of the House committee (H. R. No. 949), and recommend the indefinite postponement of the bill.

O

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 908.]

*The Committee on Pensions, to whom was referred the bill (S. 908) granting a pension to Susan L. Watson, have examined the same, and report:*

Your committee adopt as their report the report made in this case (S. Report No. 527, Forty-fifth Congress, second session), which is as follows:

Deceased officer was appointed pay-director August, 1836, and served during the Mexican war and late civil war, and was honorably retired from active duty. He died July, 1876, at Portsmouth, N. H., and the application for pension having been unfavorably acted upon by the department, petitioner now seeks relief by special act of Congress.

The faithful services of the deceased officer and the necessities of his widow are abundantly sustained by the testimony, but the evidence does not prove or create even a strong presumption that the disease causing death was incurred in the service and the line of duty. There is no provision in the present law covering this claim, and the committee recommend indefinite postponement of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 607.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 627.]

*The Committee on Pensions, to whom was referred the bill (H. R. 627) granting a pension to James E. Gott, have carefully examined the same, and report:*

That claimant's case is properly stated in the following extract from House report No. 1118.

Gott was a private in Company A, Fourteenth Maine Volunteers, and served from December 7, 1861, to March 4, 1863, when discharged on surgeon's certificate of disability, setting forth that the soldier was suffering from debility caused by long-continued illness and perforation of the cheek, from gangrene and ulceration of the mouth. He was allowed a pension at $8 per month, which rate was increased to $12 from July 16, 1873, and to $18 from December 28, 1876. A further application for increase, filed July 20, 1880, was rejected by the Pension Office upon the statement made by the postmaster of the town in which the pensioner resides that the pensioner was able to work about one-third of the time.

Your committee are of opinion that, in applications for increase of pensions in which the cases are fully covered by general laws, the Commissioner of Pensions is better prepared than Congress to investigate and judge of the merits of such applications for increase, and that it is seldom wise for Congress to pass special acts overruling the decisions of the Commissioner of Pensions in such cases.

Your committee are of the opinion that the bill ought not to pass, and recommend its indefinite postponement.

O

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 608.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1767.]

*The Committee on Pensions, to whom was referred the bill (S. 1767) granting a pension to William Foose, having carefully examined the same, report:*

Claimant filed declaration for pension September 12, 1879, alleging that while in the service as a musician in the war of the rebellion he contracted rheumatism and piles. The claim was rejected by the Commissioner of Pensions, on the ground that there is no record or other evidence of claimant's having contracted or suffered from the alleged diseases while in the service.

Your committee, after careful examination of the papers on file, are of the opinion that the decision of Commissioner of Pensions was fully justified, and that there is not sufficient proof that the claimant is entitled to a pension.

Your committee recommend the indefinite postponement of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 609.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1715.]

*The Committee on Pensions, to whom was referred the bill (S. 1715) granting an increase of pension to Wilson Millar, having carefully examined the same, make the following report:*

That Wilson Millar is now a pensioner at the rate $50 per month, under the general law, for chronic rheumatism resulting in hemaplegia of left side. The claimant now asks for an increase to $72 on the ground that had he been receiving $50 at the time of the approval of the act of June 16, 1880, his pension would have been increased by that act to $72.

The committee are of opinion, from the evidence on file, that the claimant is not so disabled as to require the care of an attendant, and therefore is not entitled to an increase of pension beyond $50 under any law. Your committee recommend that the bill be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 610.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1765.]

*The Committee on Pensions, to whom was referred the bill (S. 1765) granting a pension to William R. Snook, have carefully examined the same, and report:*

That claimant filed a declaration for pension April 5, 1878, for chronic diarrhea, contracted at Vicksburgh, Miss., about July, 1863. There is no record evidence that claimant was ever treated for said disease while in the service. He claims to have been treated by the regimental surgeon, but cannot obtain his affidavit nor the affidavit of any commissioned officer to that effect. The records of the Adjutant General's office show that claimant was reported as a deserter in 1862, and court-martialed for absence without leave, and found guilty. He was reinstated in August, 1862.

There are several depositions showing that the claimant has been afflicted with diarrhea at various times since his discharge, but no sufficient evidence to show that the disease was contracted in the service. The claimant claims to have contracted the disease in 1863, but did not apply for a pension until 1878, after a lapse of fifteen years. It also appears from the last two reports of the examining surgeons, made in 1881, that no diarrhea existed at that time, and that there were no physical signs of the disease. The case rested on claimant's statement. The Commissioner of Pensions rejected the case for want of proof of origin of alleged disease in the service, and of its continuance after discharge.

Your committee are of the opinion that there was no error in the action of the Commissioner of Pensions, and that there is not sufficient proof to justify granting a pension in this case, and therefore recommend the indefinite postponement of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 611.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 329.]

*The Committee on Pensions, to whom was referred the bill (H. R. 329) granting a pension to Sylvia Jenks, have carefully examined the same, and report:*

That it appears from the papers on file in this case that claimant, Sylvia Jenks, applied for pension as the widow of George Jenks, for service in the war of 1812, and claim was rejected by Commissioner of Pensions on the ground that the "soldier did not receive an honorable discharge."

It appears that George Jenks was a private in Capt. Levi Brown's company of New York Militia from September 9, 1814, and is reported, opposite his name on the rolls of said company, "Deserted October 21, 1814; did not sign the receipt roll."

Claimant, in affidavit on file, states that her husband came home on sick leave, and was not able to return to his company, and that while sick at home the war ended. She also states that her husband became a permanent invalid, and for a long portion of the time was a helpless invalid, up to the time of his death, in 1833. There is also indefinite and hearsay evidence on file to the same effect. It also appears that claimant received a bounty land warrant for the service of her husband in said war.

Your committee are of opinion that the evidence is not sufficient to explain satisfactorily the report of desertion borne upon the records against claimant's husband.

Your committee recommend that the bill do not pass, and that the same be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 612.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 444.]

*The Committee on Pensions, to whom was referred the bill (S. 444) granting a pension to Adolph Goldt, have carefully examined the same, and report:*

That the claimant filed his declaration for a pension on the 19th day of April, 1879, for blindness of the left eye and partial loss of sight of the right eye, caused by hardships and exposure in the Virginia campaigns in 1863; also for a running sore on left leg below the knee, the result of varicose veins and fever caused by exposure, &c., at Petersburg, Va., in October and November, 1864.

The only evidence in this case, besides the official record, is the affidavit of the claimant.

The official records show that the claimant was enrolled on the 19th of September, 1862, as a private in Company F, One hundred and seventieth Regiment New York Volunteers, to serve for three years or during the war, and was mustered out of the service July 15, 1865.

The record also shows that he was admitted to the hospital at City Point, Va., on the 12th of August, 1864, for chronic diarrhea, and returned to duty January 4, 1865, and also that he was admitted June 18, 1864, with intermittent fever.

The claimant states that he was treated by the regimental surgeon while in the service for his eyes and leg, but of this there is no record. There is no record of his having been treated either for his eyes or his leg while in the service.

It is shown by the report of the examining surgeon, dated on the 11th of September, 1880, that there was total loss of the left eye, and the right eye was very weak and sensitive to light, eye painful and inflamed, and with ulcerations and sores on the left leg 2½ inches in diameter; that the claimant's disability was rated at third grade, and that in the opinion of the examiner the disability originated in the service and in the line of duty, and the disability was permanent or would increase.

The claim was rejected by the Commissioner of Pensions for lack of proof that the cause of the disability originated while in the service.

The claimant states in his deposition that he came to New York from Germany on the last of May, 1862, and enlisted in the army in September following, and that he was able to understand and speak English but little; that he was a butcher by trade; that soon after being discharged from the army he went to Jackson, La., and after remaining there a time went to New Orleans, afterwards to Shreveport, La., and

from there to Dallas, Tex., and then to Fort Griffin, Tex., and afterwards returned to Kansas, where he now resides.

The claimant also gives a long list of hospitals and physicians by which he has been treated for both his eyes and leg since his discharge, commencing with Charity Hospital, in New Orleans, in 1869, and embracing Shreveport, Dallas, Tex., and by the Indians at Fort Griffin, Tex., and at the poor asylum at Atchison, Kans., where he was at the date of his affidavit, on the 3d of December, 1879.

The claimant states that, having left New York soon after his discharge from the army, he has had no communication with any of the officers or privates of his regiment since that time; that he does not know the address of any of them, and is unable to furnish any evidence that his alleged disability originated by reason of his service and exposure in the army. It also appears that the Commissioner of Pensions is unable to furnish the address of any of the officers.

The committee, after a careful examination of the case, are of the opinion that while the rejection of a claim like this may sometimes work a hardship, yet the committee would not be justified in granting a pension upon the character of proof in this case, which rests upon the unsupported deposition of the claimant that the cause of disability originated in the service, and therefore recommend the indefinite postponement of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 613.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 801.]

*The Committee on Pensions, to whom was referred the bill (H. R. 801) granting a pension to Merritt Lewis, have carefully examined the same, and report:*

That the facts are fully stated by the Committee on Invalid Pensions, of the House, in their report (H. R. 1027), which is as follows:

This claimant was a member of Company K, Seventh Regiment of Michigan Volunteer Cavalry. At the battle of Gettysburg he received a wound which resulted in the amputation of his right leg above the knee, and while in Camden Street Hospital, Baltimore, he was attacked by scarlet fever, causing total deafness. He receives a pension of $24 per month for the loss of his leg. The Pension Office has decided that under the law the above sum is all that can be given him. The present Commissioner says this case is one that should have special relief at the hands of Congress. If Lewis had lost his leg at the hip-joint he would be entitled to a pension of $37.50 per month, or if he required the assistance of another person he would receive $50 per month. We think his disability is quite equal to the loss of a leg by amputation at the hip-joint. We recommend the passage of the bill, with an amendment, as follows:

Amend in the 6th line by striking out "infantry" and inserting "cavalry."

Amend in the 7th line by striking out "fifty dollars" and inserting "thirty-seven dollars and fifty cents."

Your committee also find that the board of examining surgeons certify on December 1, 1880, that in their opinion the disability of claimant entitles him to an increase of $37.50 per month.

Your committee recommend the passage of the bill as amended, and with the further amendment at the end of the bill after the word "month" in line 8, "to take effect from and after the passage of the bill."

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 614.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of John W. Johnson, praying for arrears of pension, have carefully examined the same, and report:*

That the petition of the claimant states that he was allowed a pension of $8 per month from the 30th of August, 1864, to the 29th of July, 1880 (at which time his pension was increased to $12 per month), and that the rate and amount of pension allowed and paid him, covering said period between 1864 and 1880, was less than he was entitled to according to the rate of his disability, from time to time, under the law granting arrears of pensions, and asks that he be granted arrears for the amount over and above the amount already paid, which Congress may deem him entitled to under the arrears of pension law.

Your committee find, as stated in the petition, that the claimant received a pension of $8 per month from August 30, 1864, to the 29th day of July, 1880, when his pension was increased to $12 per month, which he is now receiving. Your committee are of the opinion that the petitioner should not be allowed arrearages or any further relief by special act, and recommend that the prayer of the petitioner be denied.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 615.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. HARRIS, from the Committee on Epidemic Diseases, submitted the following

# REPORT:

*The Select Committee "to investigate and report the best means of preventing the introduction and spread of epidemic diseases," to whom were referred the petitions of Elizabeth R. Post and other citizens of Westbury, N. Y.; Francis G. Shaw and fifty other citizens of Richmond County, New York; Kate Garnett Wells and other members of the Moral Educational Association of Massachusetts, and of the New York committee for the prevention of State regulation of vice, praying that the power to promote or inaugurate any scheme of regulated prostitution, with the registration and compulsory medical examination of women, be not given to the National Board of Health, having considered the petitions, reports:*

That Congress has no constitutional power, either by its own direct enactment or through any board or agency that it may create, to make or enforce any such regulations in the States as those protested against by the petitioners; no power to enter upon the work of general local sanitation; but Congress has "power to regulate commerce with foreign nations, and among the several States," and the committee, believing that it is the duty of Congress so to regulate commerce as to prevent the importation of contagious or infectious diseases into the United States from foreign countries, or into one State from another, and all the powers heretofore given, and all that the committee proposes to give, to the National Board of Health, are intended to accomplish this object, and this object only, and the powers heretofore given, as well as those proposed to be given, by the bill heretofore reported to the Senate, are believed by the committee to be absolutely necessary to its accomplishment.

The committee therefore reports the petitions back to the Senate, with the assurance to the petitioners that they need have no apprehension of any action on the part of the National Board of Health upon the subject to which they refer.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 616.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1020.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1020) granting an increase of pension to Alfred G. Fifield, having had the same under consideration, beg leave to submit the following report:*

The bill has passed the House of Representatives, whose report is adopted as a fair statement of the facts:

The claimant was a private in Company C, Twelfth New Hampshire Volunteers; enlisted August 17, 1862; discharged November 17, 1863, on surgeon's certificate of disability, "on account of gunshot wound at Chancellorsville, Va., which caused a resection of the humerus (right arm)." The shot which wounded Fifield hit his right arm near the shoulder and shattered the bone, so that the head and four or five inches of the humerus had to be removed.

[Extract from the letter of Commissioner of Pensions, dated —— —, 18—, transmitting papers to the committee.]

"The claim was originally allowed at $5.33 per month from date of soldier's discharge, November 17, 1863. His pension was increased to $8 per month from September 4, 1865; to $15 from June 6, 1866; and to $18 from June 4, 1872. His subsequent applications for increase have been rejected, because his disability is not such as would entitle him to the next highest rate provided by the pension laws—$24 per month. It is conceded that the injury to the arm is equivalent to actual loss of the same above the elbow, but the rate of $24 per month, which the law provides for such loss, is not provided for a disability equivalent thereto, and unless a person is otherwise so disabled as to be incapacitated for the performance of any manual labor, no higher rate than $18 per month can be allowed."

From the medical evidence in the case we extract the following:

Dr. David B. Nelson, examining surgeon, February 1, 1864, certifies—

"The arm is helpless and useless."

Dr. Ira A. Chase, at biennial examination, September 4, 1865, certifies—

"The arm is entirely useless; should be increased to full pension."

The board of examining surgeons at Concord, N. H., September 6, 1875, certify—

"Disability is permanent, at total third grade."

Dr. D. B. Nelson, examining surgeon at Laconia, February 7, 1876, certifies—

"This disability is fully tantamount to the loss of the arm above the elbow. Disability, second grade—$24 per month."

Dr. Chase, again, August 7, 1876, certifies—

"The right arm is entirely useless, the head and four inches of the right humerus is gone, and the arm hangs dangling by his side; he could not dress or undress himself if both were like the injured arm, and amounts to total loss of right arm."

Again, the same physician says—

"The arm is in the way of laboring; in my opinion the pension should be increased to full pension."

G. P. Conn, M. D., for the board of examining surgeons, Concord, N. H., February 1, 1877, in reply to a letter of instructions from the medical referee of the Pension Office, says—

"* * * He was rated at $24 per month. The board would further state that claimant is so far debilitated that the other arm is incapacitated for other than the very lightest of duty; he being able only to canvass for the sale of a book for a long time."

Warren W. Sleeper, M. D., examining surgeon, January 9, 1878, certifies—

"Total: second grade, or $24 per month."

The board of examining surgeons at Concord, N. H., January 3, 1879, certify—

"He cannot perform any manual labor, nor is this rating in any way considered an equivalent to the loss of an arm above the elbow. Disability total; second grade, or $24 per month."

The affidavits of neighbors and friends of the petitioner are quite as strong as the medical evidence. They testify to his inability to perform manual labor, and to his correct habits of life.

Your committee are of the opinion that from the weight of medical evidence alone the petitioner is entitled to the relief prayed for. We therefore report favorably upon the case, and recommend the passage of the bill granting an increase of pension to Alfred G. Fifield from $18 to $24 per month.

In this view your committee concur, and recommend the passage of the bill.

It appears that the bill should be amended in the name of the applicant by striking out the word "Alfred" and inserting the name "Albert"; also, by adding to the bill the words "to commence from the passage of this act."

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 617.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1442.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1442) granting a pension to William Rickards, have examined the same, and report as follows:*

The claimant was pensioned at the total rate of his grade, $30, in 1865. In 1866, upon regular examination by the surgeon of the department, his rating was reduced to three-fourths, at which it remained until 1871, when, upon like examination, it was restored to total rate, where it has ever since stood.

There may be justice in this claim, but the department and Congress must rely upon evidence in order to justify the payment of the pension at all. The rate of disability must be shown by medical evidence, and if we undertake to review the ratings of surgeons in the past, upon which the department has acted, the whole service will be thrown into confusion, and every rating which has not given satisfaction, however long it has been acquiesced in, will be open to review. It seems to us that this case must be rejected, whether the claimant may or may not have suffered injury. There is no evidence of fraud on the part of the surgeon who made the reduced rating, and there was no effort to obtain a revision of his action until 1871.

We recommend that the bill be indefinitely postponed.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 618.

# IN THE SENATE OF THE UNITED STATES.

MAY 22, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1852.]

*The Committee on Pensions, to whom was referred the bill (S. 1852) granting a pension to Mrs. Florida G. Casey, having carefully examined the same, submit the following report:*

The applicant is the widow of the late Brevet Brig. Gen. Silas Casey, of the Regular Army, who died at his home in Brooklyn, N. Y., January 22, 1882, aged seventy-four years, from disease which is thus described by his attending physician in a letter on file in the Adjutant-General's Office:

The immediate cause of General Casey's death was general destruction of the vital forces, due to the failure of the digestive functions, and the remote cause was impairment of digestive organs by sickness and hardships in the service in former years.

General Casey entered the Army as a cadet at the United States Military Academy, July 1, 1822. He was the author of the well-known work on tactics, so long the basis of drill and discipline in the Army. It would be difficult to exaggerate the importance or the gallantry of the prolonged service which he rendered to the country in his chosen profession, both in peace and war.

The abbreviated record received from the War Department is altogether too long to be transcribed. It is not often that the service which an officer renders to his country is so extensive as to render its record burdensome, and it would be difficult to state more emphatically the merits of this gallant officer, and the right of the widowed applicant to the favorable consideration of the country.

Mrs. Casey is now over forty years of age, and has been in feeble health for a considerable time, with an apparent tendency to pulmonary weakness. She has one daughter, seventeen years of age, dependent upon her for support and education. Mrs. Casey has secured to her only the home where she resides, with barely sufficient income from other sources to keep it in repair and pay other necessary charges upon it, leaving her without necessary means for food and clothing for herself and child. She is almost totally dependent upon such aid as she hopes to receive in the form of pension from the government.

It seems to your committee that a pension of $50 per month is both just and necessary, and in view of the action of the government in other cases, it seems difficult to deny her this sum for the remainder of her life.

We recommend the passage of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 619.

# IN THE SENATE OF THE UNITED STATES.

MAY 20, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1659.]

*The Committee on Pensions, to whom was referred the bill (S. 1659) granting increase of pension to Mrs. Ellen M. Boggs, widow of the late Pay-Director Boggs, of the Navy, have examined the same, and report as follows:*

Mrs. Boggs is receiving pension at the rate of $30 per month. This claim was rejected by the Senate committee in the Forty-sixth Congress, report No. 775, to which reference may be had for a full statement of the facts.

Pay-Director Boggs was a most faithful and gallant officer, but we feel constrained to recommend the indefinite postponement of this bill.

O

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 620.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. HARRIS, from the Committee on Finance, submitted the following

# REPORT:

[To accompany bill H. R. 176.]

*The Committee on Finance, to which was referred the bill (H. R. 176) to refund certain duties paid upon military uniforms imported by and for the use of Company G, Sixth Regiment Infantry, Illinois National Guards, has considered the same and reports:*

That the company is composed of young gentlemen of Scotch descent, who adopted the Highland uniform and ordered their uniforms from Scotland, and this bill proposes to refund to the company the duties paid upon the same.

The committee sees no reason why the duties should be refunded in this case, and, if refunded to this company there is no reason why the duties upon the uniforms of all other uniformed military companies in the country should not be refunded; and if this policy is adopted, military companies, as a general rule, would probably import their uniforms free or duty.

The committee therefore reports the bill back, with the recommendation that it do not pass.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 621.

IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 729.]

*The Committee on Military Affairs, to whom the subject was referred, submit the following report:*

Lieut. Col. Charles H. Tompkins, deputy quartermaster-general, U. S. A., was tried by a court-martial and sentenced, at San Francisco, Cal., January 11, 1873, to suspension from rank for one year, and to forfeit all pay and allowances during the same period, except $75 a month, for an offense shown to be technical in its character. His sentence expired January 11, 1874, and he thereupon reported himself for duty to the authorities; he also applied to the quartermaster at San Francisco for quarters and fuel, to which his rank entitled him, but was refused on the ground that the Secretary of War had promulgated an order that officers on waiting orders were not entitled to fuel or quarters. Upon the decision of the Supreme Court in the case of United States *vs.* Williamson (23 Wall., p. 411), that an officer "waiting orders" was entitled to full pay and allowances of his rank, this order of the Secretary was revoked.

Colonel Tompkins was not assigned to duty until August 20, 1874, being seven months and eight days from the time of the expiration of his sentence. His claim for fuel and quarters during this time was transmitted by the Quartermaster-General to the Third Auditor for his action, and both the Third Auditor and Comptroller certified to the Secretary of War for payment of the balance due, $1,050.20; but upon the certificate being forwarded to the Quartermaster-General, he disfavored the allowance; thereupon the Second Comptroller canceled his certificate of settlement, but the Auditor refused to cancel his certificate.

The Secretary of War having personally examined the claim in 1879, wrote to the Comptroller that he had done so, and that he was satisfied the Auditor was correct in declining to cancel his certificate, and if the Comptroller, on review of the case, should reissue the certificate, the amount would be reported to Congress for allowance. To this the Comptroller replied that the claimant could have no relief from the Executive Departments, but must look to Congress.

As an officer of the Army, the claimant was entitled to certain quarters and a given amount of fuel per month, which not being furnished by the quartermaster at San Francisco, he was obliged to use his private money for that public use, and your committee are of opinion he should be reimbursed therefor.

The merits of this claim are not affected by the fact of the claiman having undergone the sentence of a court-martial, as he was as muc entitled to them as if he had not undergone such sentence.

That the offense for which he was tried was a technical one, involv ing no loss to the government, and with no improper motive on th part of claimant, the following letters show conclusively:

[United States circuit court, eighth judicial court, at chambers. Geo. W. McCrary, judge.]

KEOKUK, IOWA, *December* 8, 1881.

MY DEAR GENERAL: In answer to your favor of the 7th instant, I take pleasure in sta ing that, while in the War Department, I examined with care the proceedings of the ge eral court-martial before which you were tried some years ago, and that I reached th conclusion, concerning which I had, and now have, no doubt whatever, that the allege violations of law were purely technical, even admitting all that was claimed on beha of the prosecution, and that the sentence was altogether unjust. It cannot be co tended that there is in the record the slightest evidence of an improper motive on you part; and it is perfectly clear that what you did was believed by you to be for th best interests of the public service, and that no profit or advantage to you was possibl

I believe that the sentence should be set aside, and that the pay which was retaine from you during the period of your suspension should be restored to you. You are a liberty to make such use of this letter as you see fit.

I am, very respectfully, yours,

GEO. W. McCRARY.

General CHAS. H. TOMPKINS,
*Assistant Quartermaster-General, U. S. A., Chicago, Ill.*

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
ASSISTANT ADJUTANT GENERAL'S OFFICE,
*Fort Leavenworth, Kans., December* 15, 1881.

MY DEAR GENERAL: I was the judge-advocate of the general court-martial befor which you were arraigned in the fall of 1872, at Prescott, Ariz.

In that capacity it was my duty to make a full examination into your papers and accounts pertaining to the matter in question. You afforded me every facility for so doing, and I take pleasure in saying, as indeed I think the record shows, that the sums of money involved were actually and honestly expended for the public service, the offense of which you were convicted being a technical one in the form and measures of accounting for them.

Most truly yours,

E. R. PLATT,
*Assistant Adjutant-General, U. S. A.*

General CHAS. H. TOMPKINS,
*Assistant Quartermaster-General.*

The bill proposes only the reimbursement of moneys paid by claimant for fuel and quarters, to be proven to the satisfaction of the proper officers of the Treasury, who, in settling the account, are forbidden to allow more than the amount allowed by the government for officers of his rank at the time and place.

Your committee, in view of the facts in the case as above set forth, recommend the passage of the bill as an act of justice to Colonel Tompkins.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 622.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3761.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3761) granting a pension to Lewis Lewis, having carefully examined the same, make the following report:*

That application of the claimant for a pension was rejected at the Pension Office, for the reason that the wound from which claimant's disabilities result was not received in line of duty. The facts are that the claimant, a private in Company F, Seventy-eighth Pennsylvania Volunteers, being one of the train guard when the regiment was at Nashville, Tenn., September 28, 1862, was sent by the lieutenant of his company to post letters written by comrades. He asked for a pass, but was told that, being train guard, it was unnecessary. Returning to the depot after mailing the letters, the provost guard demanded his pass. Claimant stated what the lieutenant had told him in regard to a pass being unnecessary. The provost guard then attempted to arrest him. Claimant refused to be arrested and tried to get away. Provost guard knocked him down and stabbed him in the abdomen. As a result of the wound claimant is afflicted with hernia.

It may be true that technically the claimant was not in line of duty, being without a pass, but the fault was the fault of his superior officer, rather than his own, and in equity he would seem to be entitled to his pension. The committee therefore report the bill back, and recommend that the same be passed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 623.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1832.]

*The Committee on Pensions, to whom was referred the bill (S. 1832) granting a pension to Leonard Weber, having carefully examined the same, report as follows:*

The claimant was a private in the Thirtieth New York Independent Battery, enlisted July 24, 1861, discharged August 22, 1864, with his battery.

He filed a declaration for a pension August 26, 1873, claiming to have been injured by his horse falling upon him near Lynchburg, in May, 1864, causing injury to the back, producing hemorrhoids and chronic splenitis. It was rejected July 16, 1879, for—

No record of the alleged injury or disease, and inability to show by any evidence in existence of disease in service, or at discharge, or origin and existence of alleged injury in service or at discharge; original evidence of origin not given from personal knowledge.

A careful examination of the testimony and of his surgical examination fails to disclose any reason why the decision of the Commissioner should be overruled, and the committee therefore recommend that the bill be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 624.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4080.]

*The Committee on Pensions, to whom was referred the petition of James Newberry praying for a pension, have carefully examined the same and report:*

That there are no papers whatever on file in this case except the petition of the claimant, which is sworn to. The petition recites that the petitioner is eighty-four years of age; that he was teamster in the United States service in the war of 1812, and served about two years in the company known as the Cumberland Blues, and received an honorable discharge at the close of said war from General Cadwallader, which discharge was burned; that he also served about one year in the Mexican war as a private in the Second Regiment of Pennsylvania Volunteers, and that his discharge from the Mexican war has been lost, but that he has in his possession a certificate from Captain Humphrey substantiating this statement; and that he served as private in the late war of the rebellion in Company F, Eighty-fourth Regiment Pennsylvania Volunteers, having enlisted in that capacity in September, 1861, and was discharged from the service in June, 1862, by reason of old age and loss of sight, which is so stated in his discharge; that he reenlisted in the service on the 22d of August, 1864, as private in the Eighty-first Regiment Pennsylvania Volunteers, and was discharged June 1, 1865, by reason of General Order No. 26, all of which is fully set forth in his discharge which he has in his possession; and that whilst in the service in 1862 as assistant wagon master he was injured by his horse taking fright and plunging over an embankment, one of the horses rolling over him and injuring him internally. But by reason of the death of the surgeon who attended him he is unable to furnish the necessary proof required by the Pension Department in order to receive a pension. A communication from the Commissioner of Pensions, on file, shows that the petitioner has never made application for a pension at the Pension Department.

Your committee consider it remarkable that in a case so susceptible of proof as the services described in the petition no evidence whatever is filed to corroborate the statements of the petitioner except two of his discharges for service in the war of the rebellion.

Your committee are of the opinion that if the claim of the petitioner was supported by proof it ought to secure to him the favorable consideration of Congress, but that it would be imprudent and a bad precedent

to grant a pension upon the unsupported application of the petitioner, especially where no effort has been made to support the declarations of the petitioner by proof.

Your committee, therefore, cannot agree with the conclusions reached by House Report No. 516 of the present session, and recommend that the prayer of the petitioner be denied.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 625.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1804.]

*The Committee on Pensions, to whom was referred the bill (S. 1804) granting a pension to John M. Hudson, having carefully examined the same, m i ı ı r eport:*

Claimant enlisted May 10, 1864, and acted as ensign on U. S. S. Flambeau; was discharged September 15, 1865; filed his declaration for invalid pension on June 30, 1879, fourteen years after discharge from service, for rheumatism, defective vision, and orchitis, contracted in the service.

Claimant is unable to furnish any medical evidence that he was treated for these diseases while in the service, neither is he able to furnish any sufficient evidence of the diseases named during his service, and the reports of the examining surgeons, made in 1879–'80, are conflicting as to the character and extent of his present disabilities. Claimant is the same Captain Hudson who crossed the Atlantic in the Red, White and Blue, a boat 26 by 6, with only one companion and a dog, in 1868.

The claim was rejected by Commissioner of Pensions, upon the grounds that there is no record evidence in the Navy Department of the alleged diseases, and the claimant's inability to furnish testimony to connect either of them with the naval service.

Your committee are of the opinion that there is no evidence to show that claimant was afflicted with any of the diseases named until many years after his discharge from the service, and that there is no error in the decision of the Commissioner of Pensions in rejecting the claim.

The committee recommend the indefinite postponement of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 626.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 372.]

The Committee on Pensions, to whom was referred the bill (S. 372) granting a pension to Sarah H. Bradford, having carefully considered the same, made an adverse report on January 10, 1882. On March 29 the bill was recommitted to the committee for further consideration.

Since the recommittal of the bill no new evidence has been introduced for the consideration of the committee.

The committee can find no sufficient grounds for a favorable consideration of this case, and report the same back, with a recommendation that it be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 627.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 570.]

*The Committee on Pensions, to whom was referred the bill (S. 570) granting an additional pension to Watson S. Bentley, having examined the same, make the following report:*

That said Bentley was a corporal in Company B, Thirty-seventh Regiment Massachusetts Volunteers, in the late war, having enlisted July 15, 1862, and was honorably discharged February 1, 1865.

On the 4th of February, 1865, he filed his application for invalid pension, alleging, as the basis of his claim, that in the service and in the line of his duty, "at the battle of Spottsylvania, Va., May 12, 1864, he received in action a gunshot wound, causing loss of front lower jaw." It was clearly shown that he was wounded as alleged, the ball passing through the lower front jaw, from left to right, shattering the same. Dr. Wright, examining surgeon, under date of February 24, 1865, certified to the disability as above described, and stated further that the claimant could not masticate solid food, and was compelled to subsist on soft diet and liquids, and that his deformity was very great.

On the 13th of March, 1865, the claimant was pensioned at the rate of $8 per month, commencing February 1, 1865. From the papers on file it appears that the claimant's pension was subsequently increased to $15 per month from June, 1866, said increase being based upon the certificate of another examining surgeon, who described his condition in 1867 as follows:

> A ball carried away the lower jaw. The process of healing has contracted the mouth to a half inch diameter. No mastication; very difficult articulation; can eat nothing but soft food; the disability is permanent; *disability equivalent to loss of hand or foot.*

He was next examined September 5, 1873, and the surgeon rated his disability as total third grade or degree, and describes his condition as follows:

> The muscular contraction is such after healing that the aperture of mouth is an eccentric of one half inch diameter; has no nourishment except liquids; no mastication; muscular development less than two years since. I judge him equal to total disability in the third degree, and entitled to continuance of $18 per month.

His pension appears to have been increased to $18 per month March 24, 1873, commencing from June 8, 1872, and the foregoing certificate of September 5, 1873, recommended a continuance at this rate.

The claimant was next examined by the same surgeon on September 4, 1875, who, after describing his condition as above set forth, certifies

that since last examination claimant had lost flesh and vigor. H recommended a continuance of the pension at $18 per month.

On the 3d August, 1877, the claimant made application for increase and on the 23d August, 1877, the same surgeon who had previousl examined and reported on the case again examined him, and certifie as follows (after describing the wound): That—

As the result of the healing of the muscles that were left, which leaves him a aperture where his mouth was of about three-quarters of an inch in diameter, ha very little contraction or dilation of that; no mastication, from the loss of all osseou substance of lower jaw; lives upon liquid food; indigestion and diarrhea continuou The natural tendency has been so good, and his determination to exist upon his die for the past years has held him up. But since last examination I find him failing i digestion, muscularity, and general health, and must continue; one of the most pecu liar cases resulting from gun-shot wound. I find his disability equal to and entitlin him to total third grade, increasing him from $18 to $24 per month; excellent habit

No action seems to have been taken by the Pension Bureau on thi certificate and recommendation, and in 1878 the claimant again urge upon the Commissioner his claim for an increase to $24 per month, an supported it by affidavits of two neighbors, McNeil and Muir, wh state that said Bentley is at times wholly unable to perform any manu labor, and, further, that at times he does perform light manual labo What his circumstances and occupation are does not appear. No me ical examination appears to have been made of his case since Augus 23, 1877, and no additional evidence has been produced before you committee as to the claimant's present condition.

After a careful consideration of the case, your committee are of th opinion that under the report of the last examining surgeon, in connec tion with the statements of the two neighbors, the claimant is entitled to the increase for which he applied. The present bill proposes to in- crease his pension to $50 per month. Your committee think the case will be properly rated at $36 per month. They accordingly recommend that the bill be amended by striking out the words "fifty dollars" in the eighth line of the bill and inserting in lieu thereof the words "thirty-six dollars," and at the end of the bill add the following: "And that said increase of pension take effect from and after the passage of this act." And, as thus amended, your committee recommend that the bill be passed by the Senate.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 628.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1814.]

*The Committee on Military Affairs, to whom was referred the bill S.* 1814, *have duly considered the same, and submit the following report:*

This bill provides for the disposition of all the lands embraced in the Fort Rice military reservation in Dakota, and of all the lands in the Fort Randall military reservation lying east of the Missouri River.

The following is the history of these reservations, as taken from War Department reports:

FORT RICE, DAK.

Post established July 11, 1864.

Located on the west bank of the Missouri River, about 10 miles above the mouth of the Cannon Ball River, and 28 miles south from Bismarck, on the Northern Pacific Railroad.

Reservation declared by the President September 2, 1864, and (the same lands) January 22, 1867; 25 miles long and about 7 miles wide.

January 27, 1878, Lieutenant-General Sheridan recommended that the post be broken up, having fulfilled the object for which it was built, and as the troops could be quartered elsewhere without any additional expense. (See H. Ex. Doc. 79, Forty-fifth Congress, second session.)

Post abandoned and garrison withdrawn November 25, 1878 (per Special Orders 133, Department Dakota, November 18, 1878), pursuant to a letter of authority from the Adjutant-General's Office to the Lieutenant-General, dated May 16, 1878, which also directed that after the withdrawal of the garrison the fact be reported with information as to whether or not the reservation would again be required for military purposes, in order that if not needed steps might be taken for its disposition.

A detachment remained to transfer property and destroy post until February 6, 1879.

January 24, 1880, the department chief quartermaster reported that all public buildings and other public property had been removed from Fort Rice, and February 24, 1880, the department commander reported that the reservation was no longer required for military purposes.

FORT RANDALL, DAK.

*Reduction.*

Post established June 26, 1856, and still garrisoned.

Located on the right bank of the Missouri River, 75 miles by land above Yankton, and 100 miles or more by river.

Reservation declared by the President June 14, 1860.

September 9, 1867, that portion of the reservation north of the Missouri River and west of the Yankton Indian reservation was relinquished to the Interior Department, but October 25, 1870, the reserve was, with consent of said department, restored to its original limits.

Under act of Congress approved May 18, 1874 (published in General Orders No. 47, of 1874, Adjutant-General's Office copy herewith), the Secretary of War transferred to the Interior Department certain portions of the reservation occupied by settlers prior

to the date of the President's order declaring the same, or while not under military control, between the years 1867 and 1870.

By letter of December 2, 1879, the Secretary of War recommended to the House of Representatives the relinquishment to the Interior Department of the portion of the reserve north of the Missouri River not already confirmed to settlers under the act of Congress approved May 18, 1874, before mentioned. The portion thus recommended for relinquishment is located in Charles Mix County. (See in this connection bill H. R. 4575, Forty-sixth Congress, second session, and Report No. 744, accompanying same.)

Neither of these reservations has any government buildings, or is any longer needed or used for military purposes.

Similar bills have been introduced in the House of Representatives and in answer to communications from the House committee the following letters have been received from the Secretary of War:

WAR DEPARTMENT,
*Washington City, January* 30, 1882.

SIR: Referring to bill H. R. 2749, entitled "A bill vacating the Fort Rice military reservation in the Territory of Dakota," a copy of which was received with your letter of the 20th instant, requesting the views of this department in relation thereto, I have the honor to invite attention to Executive communication of the 26th instant transmitting to Congress a letter of this department of the 17th instant, reporting a list of reservations no longer needed for military purposes, and recommending legislation to provide for their disposal.*

Said list, which, with its accompanying papers, was, on the 26th instant, referred to the Committee on Military Affairs, includes the Fort Rice reservation, mentioned above.

The bill (2749) meets the approval and recommendation of the General of the Army and of this department.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. GEO. R. DAVIS,
*Of the Committee on Military Affairs, House of Representatives.*

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WAR DEPARTMENT,
*Washington City, January* 30, 1882.

SIR: Referring to bill H. R. 1896, entitled "A bill vacating all that portion of the Fort Randall military reservation, in the Territory of Dakota, lying east of the Missouri River," a copy of which was received with your letter of the 20th instant, with request for the views of this department in relation thereto, I have the honor to invite attention to Executive communication of the 26th instant, transmitting to Congress a letter of this department of the 17th instant, reporting a list of reservations no longer needed for military purposes, and recommending such legislation as will provide for their disposal.*

Said list, which, with its accompanying papers, was, on the 26th instant, referred to the Committee on Military Affairs, includes a portion of the Fort Randall reservation, named above.

The bill (1896) meets the approval and recommendation of the General of the Army and of this department.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. GEO. R. DAVIS,
*Of the Committee on Military Affairs, House of Representatives.*

The following communications were also transmitted by the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
*Washington, May* 3, 1882.

SIR: I have the honor to invite your attention to the inclosed communication of the 2d instant from the Commissioner of Indian Affairs touching the provisions of bill H.

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*House Ex. Doc. No. 39, Forty-seventh Congress, first session.

R. 2749, Forty-seventh Congress, first session, "vacating the Fort Rice military reservation in the Territory of Dakota." A copy of said bill and a draft of the military reservation, the restoration of which to the public domain is contemplated thereunder, will also be found herewith.

In view of the fact that the passage of the bill as introduced will deprive the Sioux Indians, upon whose reservation in Dakota a portion of the military reserve is situated, of a number of square miles of land, the Commissioner recommends that an amendment be introduced in the bill after the word "reservation," in line four, the following: "Except so much thereof as lies within the Sioux Indian reservation, being the lands south of Cannon Ball River and west of the Missouri River;" which is shown on the tracing by red coloring.

Approving the recommendation of the Commissioner, I respectfully present the matter for the consideration and action of your committee and of Congress.

Very respectfully,

H. M. TELLER,
*Secretary.*

Hon. D. C. HASKELL,
*Chairman Committee on Indian Affairs, House of Representatives.*

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DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
*Washington, May 2,* 1882.

SIR: My attention has been called to bill H. R. 2749 (copy herewith), Forty-seventh Congress, first session, "vacating the Fort Rice military reservation, in the Territory of Dakota," whereby all the lands embraced in said reservation are to be opened and made subject to entry as other public lands in said Territory, and the Commissioner of the General Land Office is authorized to issue the instructions necessary to carry the provisions of said bill into effect.

This military reservation was first set apart by the order of the President, as follows:

EXECUTIVE MANSION, *September 2,* 1864.

Let the Fort Rice military reservation be established according to the inclosed diagram, as recommended by the Departments of War and the Interior.

A. LINCOLN.

This was followed by a later order, made by President Johnson, as follows:

The reservation for Fort Rice, Dakota Territory, according to the inclosed plat and description, signed "A. Sully, Brig.-General," is hereby made for military purposes, and the Secretary of the Interior will cause it to be noted in the Land Office to be reserved as a military post.

ANDREW JOHNSON.

EXECUTIVE MANSION, *January 22,* 1867.

The outboundaries of the lands designated on said plat are as follows:

"Commencing at a point on the Missouri River two miles below the mouth of the Cannon Ball River; thence due west six miles; thence in a northerly direction to a point on the west bank of the Missouri River opposite the mouth of Apple Creek; thence across the Missouri River and along Apple Creek four miles; thence south 30 E. until it strikes Long Lake Creek; thence in a southerly direction to a point of beginning."

All of the lands south of the Cannon Ball River and west of the east bank of the Missouri River, embraced in said Executive orders establishing the Fort Rice military reservation, are within the limits of the Sioux Indian Reservation. The northern boundary of the Sioux Indian Reservation was definitely established at the time of the cession of the "Black Hills" country by an act of Congress entitled "An act to ratify an agreement with certain bands of the Sioux Nation of Indians, and also with the Northern Arapaho and Cheyenne Indians," approved February 28, 1877 (19 Stat., p. 254), which is as follows: * * * "and the northern boundary of their said reservation shall follow the said south branch to its intersection with the main Cannon Ball River, and thence down the said main Cannon Ball River to the Missouri River." * * *

By report H. R. No. 847 (herewith), which accompanied bill H. R. 2749, it appears that said bill has the approval and recommendation of the General of the Army and of the War Department, and the Committee on Military Affairs has recommended the passage of the bill. Should this bill, in its present shape, become a law, it would be a

violation of a solemn agreement with the Sioux Indians, some of whom have already made settlement and improvements on these lands. Not only this, but a conflict between the Indians and white settlers is imminent, the latter attempting to drive the Indians from their homes, and refusing to allow them to cut wood sufficient for domestic uses.

In view of the foregoing facts, I respectfully recommend that the attention of Congress be called to this matter, and suggest that said bill be so amended as to exclude all that portion of land lying within the limits of the Sioux Indian Reservation, as established by the act of February 28, 1877, by inserting after the word "Reservation" in line four of the first section the words "except so much thereof as lies within the Sioux Indian Reservation, being the lands south of Cannon Ball River and west of the Missouri River."

I submit herewith a tracing showing the boundaries of the Fort Rice military reservation, that portion thereof which lies within the Sioux Indian Reservation being indicated thereon in red.

Very respectfully, your obedient servant,

H. PRICE,
*Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

The recommendations of the Secretary of the Interior and the Commissioner of Indian Affairs are approved, and your committee have prepared a substitute for said bill to meet these recommendations, and recommend the passage of the substitute herewith reported.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 629.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1341.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1341,) granting a pension to James B. White, having carefully examined the same, make the following report:*

Claimant enlisted October 4, 1861, and was discharged October 28, 1862. Filed application for pension August 1, 1876, fourteen years after his discharge, for an injury to his left knee, which he claims resulted in amputation of leg on the 29th of March, 1876.

Claimant states that about March 23, 1862, at Winchester, Va., while attempting to get over a rock fence on a hasty march, he fell, injuring his left knee. There is no record evidence of any medical treatment for such injury.

Claimant was discharged October 28, 1862. The certificate of disability upon which he was discharged states:

> He is incapable because of varicocele enlargement of the epididymus and testicle, both sides being affected, and is the result of hard living and exposure while serving in the pioneer corps of Shields's division.

Claimant proves by comrades that he did receive a fall at Winchester and complained of his knee being hurt.

The first evidence of any treatment by a physician is the statement of Dr. Jason Roberts that he treated claimant from 1865 to 1869 for injury to left knee, the entire parts of the joint and contiguous tissues suffering from inflammation. This treatment commenced some three years after his discharge from the Army.

The only additional medical testimony is the evidence of Dr. Charles Hilder, that he amputated claimant's leg in March, 1876, but knows nothing of the original cause of the injury.

The Commissioner of Pensions rejected the claim—

> Because the records furnished no information as to the alleged injury in the service, and the evidence fails to connect claimant's present disability with the service.

Your committee, after careful examination of the case, are of the opinion that the length of time which elapsed after the claimant's discharge from the Army before he received any medical treatment, together with the lack of evidence that he received any treatment for the injury to the knee while in the service, and the lack of proof connecting the alleged injury from the fall at Winchester with the subsequent amputation of the leg, fully justify the rejection of the claim by

the Commissioner of Pensions; and are also of the opinion that t
not sufficent evidence to authorize the passage of the bill for
relief.

Your committee therefore recommend the indefinite postponem
the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 630.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2910.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2910) granting a pension to Kate Willhortz (improperly written Wilhorlitz in bill), have had the same under consideration, and report:*

That the facts set out in the House committee's report, as follows, are substantially correct:

It appears that the said Kate Wilhorlitz is the dependent mother of Joseph Wilhorlitz, who enlisted as a private in Company I, Nineteenth Regiment United States Infantry, June 28, 1871, and served five years, when he was discharged by reason of expiration of term of service. In November, 1876, he re-enlisted in said service as a private in Company C, Second Regiment United States Cavalry, and was discharged therefrom on surgeon's certificate of disability, said certificate stating that he had chronic bronchitis.

Said soldier died on the 4th day of July, 1877, less than two months after discharge, and the attending physician states that his disease was consumption.

The claimant files an affidavit that when her son returned from the Army his voice was so weak and feeble it was difficult for him to give utterance to words by which his wants could be made known, and for that reason she failed to gain information from him as to the time and circumstances when he was first attacked, and the names of the witnesses by whom the necessary facts could be proved to entitle her to pension.

The fact of claimant's dependence upon her said son is clearly made out. Her husband is very aged, and she has two deaf and dumb children to support, one of whom is paralyzed.

Her claim for a pension was rejected because the certificate of disability under which the soldier was discharged contained the statement that the soldier was a victim of said disease when last enlisted.

In addition to the foregoing facts it may be stated that the soldier was discharged from his first term of five years' service, June 28, 1876, and re-enlisted November 14 following, being out of the service not quite five months. It is claimed that he contracted his disability during an expedition in the Black Hills, he taking a severe cold, from which the complaint of which he died subsequently developed. It is apparent from the evidence that the expedition referred to took place during the soldier's second enlistment. It also appears from his certificate of discharge, by way of recital, that "during the last two months said soldier has been unfit for duty sixty days. This man has done no duty since he joined the company. Disability existed previous to enlistment."

The surgeon's certificate, which accompanies this certificate of disability, says:

From the voluntary statement of the soldier it is believed that the disability existed to some extent before he joined his company. The record of the cavalry recruit-

ing rendezvous, Chicago, Ill., for November, 1876, shows that this soldier was ex and rejected because of embarrassed respiration a few days prior to date of ment. Indorsed upon this certificate is the following: "Headquarters of the Medical Director's Office, Omaha, May 21, 1877. Respectfully returned to the a adjutant-general." Discharge recommended. The within named Joseph W is not entitled to pension. The evidence accompanying these certificates sho he was *rejected* at Chicago, November 9, 1876, for "embarrassed respiration," the 14th of the same month enlisted at Columbus Barracks, which indorse signed by the head of that office.

Your committee are satisfied that the disease of which the soldie was already contracted at the time of his second enlistment, and is no evidence to show that his disease had its inception duri term of his first enlisment; besides there is no proof of the depen of the mother, and therefore your committee recommend that t do not pass.

O

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 631.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2093.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2093) granting a pension to Godfrey Droyer, have had the same under consideration, and report:*

That Droyer was enlisted August 4, 1862, and discharged June 13, 1865. He appears, from the records of the War Department, to have been present and on duty until December, 1864, when captured and reported a prisoner of war.

He filed an application for pension April 5, 1870, alleging as disability disease of the eyes, claimed to have been contracted in the service and in the line of his duty about February 1, 1864. Capt. A. J. Ware, of claimant's company, testifies generally to the effect that the disability was chargeable to the exposure which the claimant underwent while assisting in the building of block-houses for the railroad guards on the road from Nashville to Murfreesborough, Tenn., during the winter of 1864. Three comrades also testify to a like origin of claimant's disability, and to a gradual increase in severity during the remainder of claimant's service. Soundness at enlistment is shown. It is also shown by the affidavit of Dr. James Davidson that he treated the claimant in July, 1865, for purulent ophthalmia of the eyes, with tendency to granulation of the eyelids, but the treatment afforded no relief.

Upon this evidence the Pension Office issued a certificate, dated May 7, 1875, allowing the claimant a pension, rating his allowance at $6 per month from date of disability, and $10 per month from April 7, 1875. At this juncture, and before the certificate was actually mailed, a special agent of the Pension Office gave information to the office that, from statements made to him, it appeared that claimant's disability was gonorrheal ophthalmia. A special investigation was ordered. This investigation was thorough and searching, and clearly, in the minds of your committee, establishes the fact by incontestible proof that the disability of the claimant was gonorrheal ophthalmia. The evidence is full and explicit that the claimat was intemperate during his service, and also licentious; that he contracted gonorrhea in Cincinnati in the fall or winter of 1862–'63; that instead of receiving treatment from regimental surgeon, or going to a hospital, he was prescribed for by a Lieutenant Torrence, who was a local physician, and was in the habit of attending to such cases; that not recovering, he was finally, about the 1st of March, 1863, ordered to the venereal ward of the general hospital at Camp Denison, Ohio, for treatment; that soon after he contracted gonorrhea his eyes became

blood-shot and matter oozed out of them. He continued in this st so far as his eyes were concerned, until he went to the venereal war the general hospital, as stated above. When he came out of the hosp his eyes were weak and still bloodshot, and continued so.

There appears to be no record of his treatment at the hospital, the surgeon in charge fails to remember the case or treatment, but remember the case of another soldier suffering with similar disease to said ward at the same time as claimant was and by the same offi

From all the evidence, your committee have no doubt that the ability of claimant is the direct result of his own vices. The sol is shown to have been faithful and obedient, but your committee fa see any reason in this case to make it an exception, and every rea why the decision of the Pension Office should be sustained; and, th fore, your committee recommend that the bill do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 632.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1772.]

*The Committee on Pensions, to whom was referred the bill (S. 1772) granting a pension to Isaiah Mitchell, having considered the same respectfully report:*

This is a peculiar case. Mitchell was a corporal Company G, One hundred and fifteenth United States Colored Troops. He enlisted April 10, 1865, and was mustered out with his company February 10, 1866. He was pensioned for the combined disabilities of injury to right foot, the same having been crushed by a falling tie, and pharyngitis, the result of diphtheria, at the rate of $6 per month from February 11, 1866. The injury to foot was rated at $4 and the disease of throat $2 per month. This pension he enjoyed until June 4, 1877, when he voluntarily surrendered his certificate, and stated as a reason for doing so that he thought his disability had ceased, and that he felt that he ought no longer to draw a pension. His last biennial examination prior to surrender was September 4, 1875, when the examining surgeon certified as to disability in his foot as follows: "The applicant appears to have received the wound from the fall of a railroad tie upon the instep of right foot, causing swelling of limb and stiffness of joint, inability to stand or perform manual labor," and that his entire disability continued at $6 per month.

From 1874 to April 19, 1881, Mitchell was steward of the "Old Colony Club" in this city. Up to 1879 his physician was Dr. John C. Riley, who died February 22, 1879. From October 28, 1880, to November 4, 1880, he was attended by Dr. Francis for pharyngitis. He applied for restoration to the pension-roll June 8, 1881, alleging that both disabilities for which he was originally pensioned still existed. He furnished the affidavit of Dr. Francis as to the throat disability, but no evidence other than his own statement as to the disability of his foot. He referred in his application for restoration to the evidence on file in support of his original application, and to his biennial examinations. He stated that soon after surrendering his certificate in 1877 he found that he had made a mistake in supposing that he was well, and that he was still suffering from the same causes; that so long as he continued steward of the club his work was light, and although both his throat and foot troubled him he thought he would try to get along without asking for restoration; that after his employment at the club ceased, and he had to use his foot more, it became more painful, so that he was unable to

perform labor which necessitated its constant use, and he felt that was entitled to receive his pension.

He was ordered to be examined with reference to restoration, and board of surgeons, Dr. Reyburn president, certified to the contin existence of the throat disease, but as to the alleged disability in foot, said: "There is no thickening of the tissue about right foo other evidence of injury, and in our opinion no disability from c alleged." He was restored to the pension-roll at $2 per month fo sease of his throat June 24, 1881.

He immediately applied for increase upon the ground of disabilit his foot, asking for a review of the case and a new examination, cl ing his examination had not been thorough, and that the injury to foot to be "a peculiar injury, no scar is left, but lifting or walking duces all the pain as though the injury was fresh instead of being old one." He was examined by Drs. Hood, Baxter, and Griswold of Pension Office, who reported August 22, 1881:

> The measurements of right foot are one-fourth of an inch less than left foot, b scars visible. He complains of pain and swelling, on exercise, in this foot, and extending to calf and knee. We find no evidence at all of any disability becau any injury to the right foot. It presents no swelling, tenderness, or other cond to show that it disables.

The application for increase was rejected, an appeal taken to the retary of the Interior, and decision affirmed November 26, 1881.

March 17, 1882, he was again, at his own request, examined by a bo consisting of Drs. Reyburn, Stanton, and Tyler, who report:

> There is no cicatrix or other evidence of injury of right foot; slight swelling of leg; some enlargement of inguinal gland of right side; slight lameness; not sati that he is disabled from the injury alleged.

The claimant has employed no attorney, has furnished no evidenc the continued existence of the disability in his foot, except his own st ments, and insists that his honesty in surrendering his pension whe thought his disability had ceased shall be taken as a guaranty tha is honest and correct in his claim that he is now suffering from said ability.

In view of the fact that the injury to his foot is of a character wh leaves very little external evidence of disability, the fact that his su cal examinations seem to show evidence of some disability at the pre time, and the fact that the claimant, who was honest enough to sur der his pension when he thought himself cured, is entitled to consid tion when he states that he now suffers from the original injury, committee have concluded to recommend the passage of the bill with amendment.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 633.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1180.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1180) increasing the pension of George H. Blackman, have had the same under consideration, and report:*

That the facts are substantially set forth in the following extract from the House report:

We find upon examination of the evidence before your committee that the petitioner enlisted September 23, 1861, as private in Company E, Ninety-third Regiment New York Volunteers, and that he continued in such service until July 13, 1865, having during that time participated in a number of battles, and having been promoted to first lieutenant, which rank he held when he was mustered out of the service. On the 6th of May, 1864, at the battle of the Wilderness, he was wounded by a minie ball striking him in the right breast and passing into the body, which ball has never been extracted. Another similar ball struck and shattered the bones of his right arm to such an extent as to necessitate, eight days thereafter, the amputation of said arm, which was accomplished by dislocating the shoulder-joint and removing the arm from its socket; and by reason of amputation the various bones contiguous to such joint have lost their support at such joint, and its various cartilages and ligaments, to such an extent that by the effect of said wound in the right breast the entire left side of the petitioner's person has become weakened and impaired, thereby incapacitating him from any kind of manual labor whatever, the weakness and impairment of his right side impairing any use of the right arm for any purpose requiring any degree of effort or muscular endurement whatsoever.

Your committee further find that your petitioner is now in receipt of a pension at $24 per month, that being the rate allowed by law for pensioners who have lost one arm above the elbow; that the petitioner is far more disabled and incapacitated, not only for manual labor, but for any and all purposes, than those rated simply for loss of an arm.

In view of his helpless condition he asks that his pension be increased to the rate of $50 per month; that the Pension Office has no power in the premises in view of the technical construction and phraseology of existing statutes. The statement of the petitioner is indorsed and certified to as correct in regard to his physical condition by Drs. Benjamin Norton and John T. Jamison, two examining surgeons of the Pension Office located at Belmont, N. Y., and Hornellsville, N. Y. The last-named surgeon states that the petitioner has lateral curvature of the dorsal spine, the probable result of the injury to the right shoulder.

His application for an increase of pension was rejected by the Pension Office March 11, 1875, "because the evidence did not show that he is so helpless by reason of the injury as to require the regular aid and attendance of another person."

Your committee, upon a full and careful consideration of the evidence in this case, are of opinion that this case may fairly be considered an exception to the general rule, and that there should be an increase of pension granted to claimant, and therefore recommend that the bill do pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 634.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1154.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1154) granting a pension to Edward Farr, have had the same under consideration, and report:*

That the facts and history are fully and accurately set out in the report of the House Committee on Invalid Pensions, which your committee adopt as their own, and is as follows:

The claimant, Edward Farr, enlisted August 6, 1862, in Company E, One hundred and seventeenth New York Volunteers. He was discharged March 12, 1863.

The claimant's proofs show, by affidavit of his family physician, that his physical condition for several years prior to enlistment had been always good, requiring no treatment; that he was a strong, able-bodied man, working at all kinds of farm labor, and having no heart disease. These facts are also testified to by several of his neighbors.

The affidavit of the examining surgeon of the regiment, who examined the claimant for muster into the service, shows he was then in "sound health and free from any disease or affection of the heart."

The affidavit of the assistant surgeon of the One hundred and seventeenth Regiment is that after claimant had been in the service some five or six months, claimant, "from rapid marches in the performance of his duty as a soldier, and exposure to the wet and cold at time of such marches, and immediately following the same, was taken severely ill, and with such illness was confined several months in tent at Camp Morris, Maryland, and until discharged from service, during which time affiant attended upon the said Farr medically as surgeon aforesaid, and gave him treatment; *that the said illness of the said Farr resulted in an affection of his heart*, on account of which he, the said Farr, was discharged from the service." The proofs show, and it is conceded, that claimant has continued, since his discharge, affected with this heart disease, and that it has destroyed his power to labor. So appears by the certificate of the examining surgeon of the Pension Office.

The assistant surgeon testifying to the facts of the contraction of this disease is now one of the examining surgeons of the Pension Department, and a man entitled to full credit.

The certificate to the discharge, and upon which this man was discharged, is made by another assistant surgeon, who is not shown to have had any personal knowledge of claimant prior to enlistment, but who states "he finds him incapable of performing the duties of a soldier, because of disease of the heart, *which existed to some extent prior to his enlistment*, but which permanently disqualifies him for service."

Because of the words "*which existed to some extent prior to his enlistment*," the Pension Office rejected the claim.

So far as can be discovered in the whole case, these words were inserted in this certificate solely as an opinion by a surgeon not personally acquainted with claimant, but they are construed to outweigh the sworn testimony of the surgeon and assistant surgeon of the regiment, the testimony of claimant's family physician and neighbors.

This pension was applied for March 29, 1871.

We then have the testimony of claimant's family physician and neighbors that this disease of the heart did not exist before enlistment; the testimony of his regimental

surgeon that it did not exist when he was mustered into the regiment; the testimony of his assistant regimental surgeon as to the hardship of service producing illness resulting "in an affection of the heart," "on account of which he was discharged;" that the same has continued and still exists.

There is no evidence whatever to the contrary, except this statement in the certificate before stated.

Your committee are of the opinion that the claimant has fairly made out his case and entitled to the relief asked. Therefore, your committee recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 635.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

# REPORT:

*The Committee on Military Affairs, to whom was referred the petition of John B. Stranch, have duly considered the same, and submit the following report:*

The petitioner claims $65 for the loss of a horse by him as a private in Company C, Third Regiment Missouri Mounted Volunteers, under Colonel Ralls, in Mexican War, alleged to have been captured by Indians August 1, 1847, and also compensation to the amount of $223 for services as first lieutenant, Company D, Fifth Regiment United States Reserve Corps, Missouri Volunteers, up to December 1, 1861.

The petition is verified by affidavit, and with the petition was filed what purports to be a copy of the commission as first lieutenant, issued by Willard P. Hall, acting governor of Missouri, under date February 17, 1862, *to rank* from 17th September, 1861. No other evidence or papers were presented.

Your committee, on application to the Second Auditor and the Secretary of War for information, &c., as to the claim for loss of horse and for compensation as first lieutenant, received the following communications:

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
*Washington, D. C., April* 11, 1882.

SIR: I have the honor to acknowledge receipt of your letter of the 6th instant, inclosing petition of J. B. Stranch for compensation for the loss of a horse in the war with Mexico, and to inform you that no claim for compensation for the loss thereof has been filed in this office. You are also informed that consideration of claims for horses lost is barred by act June 22, 1874, unless presented prior to January 1, 1876, and that there are no records in this office from which a military history of the claimant can be obtained. Such records are filed in the War Department.

Your letter and the petition of said Stranch are herewith returned.

Very respectfully,

E. W. KEIGHTLEY,
*Auditor.*

Hon. F. M. COCKRELL,
*United States Senate, Washington, D. C.*

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WAR DEPARTMENT,
*Washington City, May* 16, 1882.

SIR: Acknowledging the receipt of your letter dated April 8, 1882, inclosing a copy of the commission of Lieut. John R. Stranch, United States Reserve Corps, Missouri Volunteers, and requesting the military record of that officer, I have the honor to

transmit herewith a report, dated the 13th instant, from the Adjutant-General of t Army, which contains the desired information.

The copy of Lieutenant Stranch's commission is herewith returned as requested.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. F. M. COCKRELL,
*United States Senate.*

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WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*Washington, D. C., May* 13, 1882

SIR: I have the honor to return herewith the communication of honorable F. Cockrell, of Committee on Military Affairs, United States Senate, inclosing copy of commission of John B. Stranch, as first lieutenant Fifth United States Reserve Co Missouri Volunteers, with request to be furnished with the military history of t officer and such additional data as may be deemed important, and to report as follo

The records of this office show that the Fifth Regiment United States Reserve Cor Missouri Volunteers, was, under authority of Major-General Frémont, organized Saint Louis, Mo., from September to December, 1861; was consolidated with so independent companies March 18, 1862; became the Fifth Regiment Missouri Volu teers, and was mustered out by detachments (their services being no longer require during the months of September and October, 1862, under instructions from this offi dated August 28, 1862.

John B. Stranch was mustered into service as first lieutenant, Company D, Fif Regiment United States Reserve Corps, Missouri Volunteers, October 10, 1861, a was honorably discharged as such for disability, on tender of resignation to date Ju 31, 1862, by Special Orders No. 315, paragraph 2, series of 1862, from headquarte Department of the Mississippi.

There is no record evidence of his muster-in as an enlisted man of this organizatio but the muster-roll of Company D, dated December 31, 1861, reports him a first lie tenant, enrolled September 17, 1861, with remark "Pay due as sergeant until Octob 10, when elected first lieutenant."

He is reported by the Paymaster-General, United States Army, to have been paid the United States as a sergeant from September 17 to November 30, 1861, and as fir lieutenant from December 1, 1861, to include September 12, 1862, to which latter da he remained on duty.

Under the provisions of War Department General Orders No. 61, of 1861, a fir lieutenant is only entitled to muster into the service on the completion by muster- of half the company for which commissioned.

The records show that a first lieutenant's command was not completed by muster- until October 10, 1861, on which date the company was mustered in with Stranch its first lieutenant.

He may have been enrolled for the purpose of aiding to recruit the company to s cure himself a legal place at an earlier date; but the services thus rendered have n been and cannot be viewed as warranting pay in advance of the date of muster-in his command.

No application has ever been presented to this office by Mr. Stranch for recogniti as an officer, prior to his muster-in as such.

The reason why Mr. Stranch was not paid as first lieutenant from October 10, 18 the date of his muster into service, is not apparent. For any pay which may, ho ever, be due him, application should be made to the Second Auditor, Treasury I partment, this city.

I am, sir, very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General*

HON. SECRETARY OF WAR.

From the letter of the Second Auditor it appears that the petition has never presented any claim for the loss of horse, although he cou have done so at any time from the date of the loss of the horse in A gust, 1847, up to January 1, 1876. It would be wholly inexpedient Congress to undertake to consider and pass upon claims of this char ter after having provided ample remedies in the proper department, a your committee cannot therefore recommend relief by special legis tion in individual cases. The petitioner must await some general leg lation for such class of claims as his.

From the letter of the Secretary of War, and the report of the Adjutant-General, it appears that petitioner was mustered into the service as first lieutenant Company D, Fifth Regiment United States Reserve Corps, Missouri Volunteers, October 10, 1861, and was honorably discharged on tender of resignation for disability to date July 31, 1862, and that he was paid as sergeant from September 17, 1861, to November 30, 1861, and as first lieutenant from December 1, 1861, to September 12, 1862, and that under the law the company was not entitled to a first lieutenant until October 10, 1861, and that he was duly mustered into the service on that day. The copy of his commission seems to show that he was never in possession of his commission, and his commission was not even issued until February 17, 1862. If he be entitled to the compensation of first lieutenant from October 10, 1861, to November 30, 1861, the law authorizes the Second Auditor of the Treasury Department to receive and audit his claim therefor, and no legislation by special bill or otherwise is necessary.

Congress ought not to hear or consider claims of this character when the proper accounting officers provided by law have jurisdiction and authority to receive and decide them.

There is no merit in this application to Congress for special relief, and no relief by Congress is expedient or necessary.

Therefore your committee report the petition back, with the recommendation that the prayer of the petitioner be not granted, and that for his claim for compensation as first lieutenant, the petitioner be remitted to his remedy before the proper accounting officers of the Treasury Department.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 636

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany petition of George W. Burchfield.]

*The Committee on Pensions, to whom was referred the petition of George W. Burchfield, praying for a pension, have examined the same, and report:*

George W. Burchfield enlisted in Company A, Fifth United States Calvary, on or about the 11th day of March, 1861, under the name of George W. Burch, and was discharged therefrom on the 10th day of March, 1864. He filed a claim for pension on the 12th of March, 1875, alleging that while in the service and in the line of duty at Thompson's Cross Roads, Virginia, on the 3d day of May, 1863, he received a saber wound in left elbow joint for which he was treated in Saint Aloysius hospital, Washington, D. C., and from which wound he claimed to be disabled from earning a support for himself and family. His application was made in the name he served under.

Surgeon's certificate shows that he was admitted to hospital May 11, 1863, for treatment for saber cut of arm and scalp; was furloughed May 23, 1863, readmitted June 23, 1863, and returned to duty September 21, 1863. P. C. Rundio, the surgeon who examined him, certifies, under date of May 17, 1875, that he received a slight saber wound on the left fore-arm, near the elbow.

> The scar is not larger than a good sized wart, and I don't think it hurts him. I think he ought to be ashamed to present himself to a surgeon with such a wound as that.

His claim was rejected May 21, 1875. He now comes to Congress for relief by special act. In his petition he states that he—

> Was wounded in action on Stoneman's Raid, May 4, 1863, at Barber's Cross-Roads, Va., and that the wounds he then received were three saber wounds on the head, one saber wound on the right arm, one saber wound on the left wrist, one saber wound on the left thumb, and one saber point through the joint of the left elbow; also, one buckshot wound in his left side, and a buckshot wound in his left hip. That by reason of the aforesaid wounds, the impairment of his constitution thereby, and more especially the saber wound in his left elbow joint, he is unable properly to maintain himself and family by manual labor, and has no other means of subsistence.

He also files in support of his claim the verified statement of William L. Troup, who identifies him and his service, and also his being wounded as claimed, and says:

> He believes that the said George W. Burchfield is so disabled and his constitution so impaired by reason of his wounds that he is justly entitled to a pension, and his circumstances are such that he ought not to be subjected to the delay incident to passing an application through the office for the granting of a pension.

There is no evidence of a medical character except the certificate of the examining surgeon already referred to, upon which it was based. His claim was rejected by the Pension Office.

Your committee are of the opinion that the claim is wholly without merit, and therefore recommend that the prayer of the petition be not granted.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 637.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of Christ Mangle, to be placed upon the pension rolls of the United States, having carefully examined the same, make the following report:*

That claimant was discharged from the service June 7, 1865, by expiration of term of service, and filed an application for pension October 15, 1873, for injury to hand, result of a burn caused by explosion of ammunition at Jonesborough, Ga., in September, 1864, and was granted a pension at the rate of $2 per month. He also received arrears of pension at same rate.

Claimant filed application for increase of pension June 25, 1880, on account of rheumatism resulting from the service. No claim for rheumatism is alleged in original application, and claimant cannot furnish medical evidence of treatment in service for rheumatism. But he furnishes evidence of comrades to the effect that he complained of suffering from rheumatism in the shoulder, while marching through South Carolina and Georgia.

The Commissioner of Pensions rejected the claim for increase on the ground that "the evidence submitted, which the claimant alleged to be the best attainable, fails to establish the origin of the disability in the service."

Your committee are of the opinion that the action of the Commissioner of Pensions is fully justified by the evidence, and that there is no good reason for Congress to interpose by special act to overrule the action of the Pension Department in this case.

Your committee recommend that the prayer of the petitioner be denied, and the committee be discharged from further consideration of the petition.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 638.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 800.]

*The Committee on Pensions, to whom was referred the bill (H. R. 800) granting a pension to Justus Beebee, have had the same under consideration, and report:*

That this case has been twice examined by the House Committee on Invalid Pensions and reported favorably; the facts as detailed in the evidence are substantially set out in the House committee's report, and are adopted by your committee as their own, which statement is as follows:

The evidence in this case shows that Sergeant Justus Beebee enlisted in the service of the United States at Flint, Mich., in Company G, Eighth Regiment Michigan Volunteers, to serve three years or during the war, and was discharged August 18, 1862, for disability. The certificate of discharge gives hernia as cause of disability, and that said Beebee was ruptured at time of enlistment.

On this statement the claim was disallowed. But there is no other evidence to support the statement of the surgeon who made this certificate for discharge, showing that claimant was ruptured at time of enlistment, but, on the contrary, Dr. Samuel Lathrop testifies that he has known Justus Beebee for the last past twenty-five years, and has been the family physician of Justus Beebee's father's family for that period of time; that he treated Justus Beebee prior to enlistment in the United States service for inflammation of the bladder, and that he is positive he had no hernia, for the reason that he made an examination at that time. Dr. Lathrop further states that immediately after his (Beebee's) return from the Army he knows he was suffering with hernia that opens into scrotum, and has been ever since his discharge.

The evidence further shows that claimant alleges scrotal hernia of left side, caused by a fall down stairs while on ship Vanderbilt, going from Annapolis, Md., to Hilton Head, with his command, about December 15, 1861, and was in line of duty when the accident occurred; his statement is corroborated by two comrades, William Christian and Sylvester W. Eccleston, who were with him at the time. Christian testifies that he detailed Sergeant Beebee to take command of the guard on that day, and that after his fall he was so injured that he had to relieve him from duty, and that after that time, while in the service, he was not able to do duty in the ranks, but had to be detailed on light duty.

Dr. Hulbert B. Shank, surgeon of the Eighth Michigan Regiment Infantry Volunteers, testifies that some time in the winter of 1862, while the said regiment was quartered at Beaufort, S. C., the said Justus Beebee applied to the deponent for medical treatment, and upon making examination found that he was suffering from incipient inguinal hernia, and adjusted a truss for such trouble, and excused him from duty on account thereof.

Your committee are of opinion that the evidence clearly establishes the fact that the disability of Beebee had its origin in the service, and while he was in the line of his duty, notwithstanding the statement in the certificate of discharge that it had its origin prior to his enlistment, and therefore your committee recommend the passage of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 639.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2088.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2088) granting a pension to Caroline Chase, have had the same under consideration, and report:*

That Charles Gildersleeve enlisted at Yonkers, N. Y., on June 21, 1861, in Company A, Fortieth Regiment New York Volunteers, and was killed in action in the battle of Malvern Hill, July 1, 1862.

The bill proposes to pension Caroline Chase as the dependent foster-mother of the said Charles Gildersleeve.

He was born on December 25, 1843. His mother died when he was about nine weeks old, and his father died about two years afterwards, and upon the death of his father, Caroline Chase, who was the maternal aunt of Charles Gildersleeve, took him into her family and brought him up and used and treated him as her son, and, from the time he was of proper age to attend school, kept him regularly at school until he was nearly fifteen years of age. For two years after he reached that age he worked for a manufacturer of glue, and all his wages were paid to the said Caroline Chase; and afterwards, until his enlistment, he worked for various persons, and gave most of his wages to her, and while in the Army he sent her various sums of money from his pay, and contributed liberally to her support; that the husband of said Caroline Chase, who was a laboring man, before the enlistment of the said Charles Gildersleeve, and about the year 1858, received a severe injury in the side from overlifting, from which he suffered increasingly until his death, and which injury largely incapacitated him from manual labor, causing frequent fainting spells when he overexerted himself; that at the time of the enlistment of Charles Gildersleeve, Caroline Chase and her husband had no property except a small amount of household goods, and did not, at any time thereafter, have any other property; and that the said Caroline Chase was dependent for a support upon her own labor and that of her husband, neither of whom could do much, and upon the money furnished them by the said Charles Gildersleeve, who never married.

Your committee recommend the passage of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 640.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3248.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3248) granting a pension to William H. H. Anderson, have considered the same, and report:*

That Mr. Anderson enlisted as a private in Company B, First Regiment Indiana Heavy Artillery Volunteers, in July, 1861, for three years or the war; that he was honorably discharged at New Orleans July 31, 1864, by reason of expiration of his term of service; that he was then and there paid in full for his service and the cost of transportation to his home in the State of Indiana; that on his passage home on the government transport Empress the boat was attacked by a band of guerrillas from the bank of the Mississippi River, and Anderson was severely wounded on the shoulder by a fragment of shell; that the result of the wound has been such as to totally disable him from the performance of manual labor.

Anderson made application to the Pension Office for a pension, which was refused for the reason that the wound which caused his disability was received after his discharge from the service.

Your committee are of opinion, upon this state of facts, that Mr. Anderson is equitably entitled to a pension, and therefore recommend that the bill referred to them be amended by striking out all after the words "Company B," in line six, and inserting in lieu thereof the words "First Indiana Heavy Artillery Volunteers," and that as so amended they recommend that the bill do pass.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 641.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5998.]

The Committee on Pensions, to whom was referred the bill (H. R. 5998) for the relief of Priscilla Decatur Twiggs, have considered the same, and recommend that the bill do pass. The case is fully stated in the House report (No. 1130), which your committee adopt, as follows:

The Committee on Pensions, to whom was referred the petition of Priscilla Decatur Twiggs, widow of the late Maj. Levi Twiggs, report the same back, with the accompanying bill, and recommend its passage.

In support of this recommendation, your committee call attention to the letter of the petitioner herewith and made a part of this report, marked A; also to the official statements B and C, made a part of this report.

A.

FEBRUARY 27, 1882.

SIR: I noticed a few days ago a resolution had been introduced by Senator Gorman asking an increase of pension for Mrs. Dulany to $50 a month, upon what grounds I am ignorant, but imagine I have equally strong claims for asking a similar increase.

During the war with Mexico, Major Twiggs and Major Dulany were in the same brigade, Major Twiggs being the senior. My husband fell, at the head of his command, at the storming of Chapultepec.

At the commencement of the war with Great Britain, in 1812, Major Twiggs entered the service, and was appointed a lieutenant in the Marine Corps; was with my uncle, Commodore Decatur, on board the United States frigate President during the engagement with the British fleet, and whose services are thus mentioned by Commodore Decatur in his official letter to the Secretary of the Navy: "Lieutenant Twiggs, of the marines, displayed great zeal; his men were well supplied, and their fire incomparable, so long as the enemy continued within musket-range." In 1836–'37, Major Twiggs was again engaged in active service in the Seminole war in Florida.

I imagine few have stronger claims upon the liberality of the government than I have, every male relative having been in the United States service; my grandfather, Commodore Decatur, sr., having been in the French war; his two sons also held commissions in our Navy. Commodore Stephen Decatur, jr., distinguished himself by recapturing and burning the frigate Philadelphia, in the harbor of Tripoli, in which engagement his brother, James S. Decatur, was killed. Again during the war with Great Britain, in 1812, he further distinguished himself by capturing the British frigate Macedonian.

My father, Capt. James McKnight, was in the Marine Corps at the time of his death. Both my brothers were lieutenants in the Navy; the elder, Lieutenant Stephen D. McKnight, was with Commodore Porter on board the Essex, and was afterwards lost at sea on board the United States sloop-of-war Wasp. As before stated, my husband fell at the storming of Chapultepec, and my only son, George D. Twiggs, was killed in an engagement one month previous, he being on his way to join his uncle, General D. E. Twiggs, as his aid.

Under these circumstances I feel I may with justice ask an increase of pension, having been in the receipt of only $25 a month since my husband's death; and being now in my eighty-first year, it must be quite apparent it can only be required for a very brief period.

Very respectfully, &c.,

PRISCILLA D. TWIGGS,
239 *Maryland Avenue, Baltimore, Md.*

Hon. ROBERT M. MCLANE.

B.

HEADQUARTERS MARINE CORPS,
COMMANDANT'S OFFICE,
*Washington, D. C., March* 20, 1882.

SIR: In obedience to the department's request, I forward an official statement the services of Maj. Levi Twiggs, in the United States Marine Corps, from date entry to death.

It affords me great pleasure to add my testimony as an eye-witness to his gallan conduct at the moment he was killed, while bravely leading his men to the assault the works at the base of the Castle of Chapultepec.

I was within a few feet of him at the moment, and witnessed his instantaneou death. He bore the character of a brave and zealous officer, and his services in th war of 1812, and in Florida and Mexico, in my opinion, entitle his widow, not only t an increase of pension as asked, but to arrears for the years since his death. She wa deprived in a month of her husband and only son, both killed while bravely fightin for the honor of the flag; and with the long record of other near relatives in the Nav and Marine Corps, which I know to be correct, she truthfully states that no one ha stronger claims upon the liberality of the government than herself, which her exem plary character through life greatly strengthens.

I trust her petition may be granted.

Very respectfully, your obedient servant,

C. G. MCCAWLEY,
*Colonel Commandant.*

Hon. W. H. HUNT,
*Secretary of the Navy, Washington, D. C.*

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C.

HEADQUARTERS MARINE CORPS,
ADJUTANT AND INSPECTOR'S OFFICE,
*Washington, D. C., March* 21, 1882.

SIR: In reply to the request of the honorable Secretary of the Navy for a full report of the service of the late Maj. Levi Twiggs, United States Marine Corps, referred b you to me, I have the honor to state as follows:

Maj. Levi Twiggs was commissioned second lieutenant United States Marine Corp 10th November, 1813; promoted first lieutenant 18th June, 1814; captain by breve 18th June, 1824; captain, 23d February, 1830; major, 15th November, 1840; killed i battle 13th September, 1847, at storming of Chapultepec, Mexico. He was continu ously in service from the date of his first commission to the date of his death, and too part in three wars of the United States. His total sea service was about three year

In the engagement between the President and the Endymion (war of 1812–'14) Lieu Levi Twiggs, commanding the marines of the former vessel, particularly distinguishe himself. (Aldrich, History United States Marine Corps, p. 58.)

Capt. Levi Twiggs was an officer of the battalion of marines which bore an hono able and highly important part in the battle of Hatchee-Lustee, and participated i arduous campaigns under General Jesup in the Indian war in Florida in 1836–'37, a received from him the highest commendations.

Major Twiggs was selected, to my personal knowledge, to lead the storming party Chapultepec, Mexico, on account of his well-known gallantry and devotion to dut and fell in the performance of that duty, in my presence.

Major-General Quitman, United States Volunteers, in his report dated at the Nation Palace, city of Mexico, September 29, 1847, gives the following account of the wo accomplished by the marines, under the lead of Major Twiggs, in that action:

"During the day I succeeded, under cover of our batteries, in making an importa reconnaissance of the grounds and works immediately at the base of the castle. T supporting party on this reconnaissance was commanded by the late Major Twiggs, the marines, and sustained during the observation a brisk fire from the batteries a small-arms of the enemy, who, when the party were retiring, came out of the works large numbers, and, although repeatedly checked by the fire of our troops, continu to advance as the supporting party retired, until they were dispersed with consid able loss by several discharges of canister from the guns of Captain Drum's batte and a well-directed fire from the right of the Second Pennsylvania Regiment, post on the flank of the battery for its support. During the day my command was re- forced by a select battalion from General Twiggs's division, intended as a stormi party, consisting of thirteen officers and two hundred and fifty men and non-comm

sioned officers and privates, chosen for this service ont of the Rifles, First and Fonrth Regiments of Artillery, Second, Third, and Seventh Regiments of Infantry, all under the command.of Capt. Silas Casey, Second Infantry.

"At dawn on the morning of the 13th the batteries again opened an active and effective fire upon the castle, which was returned by the enemy with spirit and some execution, disabling for a time the eighteen-pounder in Battery No. 1, and killing one of the men at the guns. During this cannonade active preparations were made for the assault on the castle; ladders, pickaxes, and crows were placed in the hands of a pioneer storming party of select men from the volunteer division, under command of Captain Reynolds, of the Marine Corps, to accompany the storming party of one hundred and twenty men, which had been selected from all corps of the same division and placed under the command of Major Twiggs of the marines.

"Perceiving that all the preliminary dispositions were made, Major Gladden with his regiment having passed the wall by breaching it, the New York and Pennsylvania regiments having entered over an abandoned battery on their left, and the battalion of marines being posted to support the storming parties, I ordered the assault at all points.

"The storming parties, led by the gallant officers who had volunteered for this desperate service, rushed forward like a resistless tide. The Mexicans behind their batteries and breastworks stood with more than usual firmness. For a short time the contest was hand to hand; swords and bayonets were crossed and rifles clubbed. Resistance, however, was vain against the desperate valor of our brave troops. The batteries and strong works were carried, and the ascent of Chapultepec on that side laid open to an easy conquest.

"In these works were taken 7 pieces of artillery, 1,000 muskets, and 550 prisoners, of whom 100 were officers, among them one general and ten colonels. * * *

"The command of the storming party from the volunteer division devolved on Capt. James Milles, of the Second Pennsylvania Regiment, by the death of its chief, the brave and lamented Twiggs, of the Marine Corps, who fell on the first advance at the head of his command.

"Captain Roberts, of the rifle regiment, who had led the advance company of the storming party at Chapultepec, and had greatly distinguished himself during the preceding day, was detailed by me to plant the star-spangled banner of our country upon the national palace. The flag, the first strange banner which had ever waved over that palace since the conquest of Cortez, was displayed and saluted with enthusiasm by the whole command.

"The palace, already crowded with Mexican thieves and robbers, was placed in charge of Lieutenant-Colonel Watson, with his battalion of marines. By his active exertions it was soon cleared and guarded from further spoliation."

Adjutant Baker is mentioned by the general "as conspicuous for his bravery and efficiency."

The letter of the honorable Secretary and accompanying papers are returned herewith.

Very respectfully, your obedient servant,

AUG. S. NICHOLSON,
*Major, United States Marine Corps, Adjutant and Inspector.*

The Colonel Commandant UNITED STATES MARINE CORPS,
*Headquarters, Washington, D. C.*

Your committee find that there is a precedent for this in the case of the widow of Maj. Robert Anderson, and perhaps there are others, which, taken with the facts that the petitioner is past eighty-one years of age, and is poor, and that few families have done so well in furnishing our country with defenders—none better—leads your committee to make a favorable report.

C.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 642.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. HARRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1825.]

*The Committee on Military Affairs, to whom was referred the bill* (*S.* 1825) *making appropriation for the purpose of constructing a road from the City of New Albany, in the State of Indiana, to the National Cemetery near said city, respectfully report:*

That the following letter from the Secretary of War, with the accompanying papers, sufficiently shows the propriety of the appropriation asked for.

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WAR DEPARTMENT,
*Washington City, May* 17, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant, inclosing Senate bill 1825, "making appropriation for the purpose of constructing a road from the city of New Albany, Ind., to the National Cemetery near said city," and, in response to your request for information in regard thereto, to transmit a communication from the Quartermaster-General, of yesterday's date, and the accompanying copy of report from Col. J. A. Ekin, Assistant Quartermaster-General, to whom the subject was referred.

The views of these officers as contained in said reports meet with my approval.

The bill is herewith returned.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. BENJ. HARRISON,
*of Committee on Military Affairs, U. S. Senate.*

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WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
*Washington, D. C., May* 16, 1882.

SIR: I have the honor to return herewith the communication of Senator Benj. Harrison in regard to Senate bill 1325, authorizing the construction of a road to the New Albany National Cemetery.

I transmit herewith a copy of a report made on the subject by Colonel Ekin, of this department, the officer in immediate charge of the cemetery, in whose views as to the desirability of the improvement I fully concur. The cemetery, which is very beautiful, is visited by a large number of people, especially on Decoration Day, and if the citizens of the vicinity are willing to bear a part of the expense of making these national grounds pleasant and easy of access—as they are not, at present—I think that, in the light of several precedents, the United States can with propriety lend its aid in the work.

Roads to the Vicksburg and Fort Scott National Cemeteries are now building un special appropriations granted by Congress for the purpose, and Congress has a authorized the construction of a road to the Chattanooga National Cemetery.

According to the estimate for this work submitted by Colonel Ekin, the amo named in the bill will be sufficient for macadamizing and curbing the road. The r of the work—that is, grading and repairing the road-bed—it will be seen from Ma Kent's letter, a copy of which is also inclosed, will be undertaken by the city of N Albany, and it would be well, perhaps, to provide for this in the bill as a conditi precedent to the United States doing its share of the work.

I would therefore suggest that the bill be amended as indicated on the copy inclose as with these modifications I think the end desired can be best secured.

Very respectfully, your obedient servant,

RUFUS INGALLS,
*Quartermaster-General, Brevet Major-General, U. S. A.*

The honorable SECRETARY OF WAR.

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MAYOR'S OFFICE,
*New Albany, Ind., March* 17, 1882.

DEAR SIR: The government having established a national cemetery in the nort eastern suburb of this city, and by liberal appropriations greatly ornamented an beautified it; and whereas the location of this cemetery is such as, by reason of i elevated and broken approach of unimproved streets and roads, in seasons of rain; after even a brief period of wet weather, is rendered almost inaccessible to the citize of New Albany and visitors from the surrounding country—these streets and a proaches being beyond the corporate limits of the city of New Albany—and as the a nual celebration of Decoration Day at this cemetery is observed with more imposin ceremonies, and by greater throngs of people, than that of any other public occasion therefore, I beg to call your personal attention to the urgent necessity existing for t improvement, by grading and macadamizing, of the main avenue to this cemeter leading eastward from Vincennes street, at the eastern corporate line of the city New Albany to the cemetery, and at the request, and in behalf of the people of th city and the citizens around the Falls of the Ohio, I would respectfully petition th you use your official influence to have this much needed improvement made. It estimated that the cost to the government for this improvement would be abo $12,000, while the cost to the city of New Albany for grading and preparing the roa bed for macadamizing would also be quite large. But the demand for the impro ment of the avenue is so great and urgent that I am persuaded you will recognize and act upon this petition as in your judgment may seem proper.

I have the honor to be, very truly and respectfully, yours, &c.,

B. C. KENT,
*Mayor of the City of New Albany.*

Col. JAMES A. EKIN,
*Assistant Quartermaster-General United States Army,*
*in charge Quartermaster's Department, Jeffersonville, Ind.*

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OFFICE OF CITY ENGINEER,
*New Albany, Ind., February* 18, 1882.

*Approximate estimate for the improvement of Poplar street from Vincennes street to east l of U. S. cemetery.*

| | |
|---|---|
| For 658.24 sqrs. paved & macadam., at 7.00 | 4,607 |
| For 164.56 sqrs. gutter paving, at 12.00 | 1,974 |
| For 4,074 ft. curbing, at 70 | 2,851 |
| For 181,530 brick, & hauling, per M, 13.00 | 2,359 |
| Total | $11,794 |

GEO. M. SMITH,
*City Eng'r*

A true copy.

JAMES A. EKIN,
*Assistant Quartermaster-General, U. S. Army*

THE JEFFERSONVILLE DEPOT OF THE
QUARTERMASTER'S DEPARTMENT,
*Jeffersonville, Ind., March 22, 1882.*

GENERAL: I have the honor to transmit herewith, for your information, a letter addressed to me, on the 17th instant, by the Hon. Bela C. Kent, mayor of the city of New Albany, Ind., setting forth the necessity for the improvement of the road leading from Vincennes street to the New Albany National Cemetery, and suggesting the assistance of the United States Government in making this improvement.

A plan of the profile of Poplar street, leading from Vincennes street to the east line of the cemetery, and an approximate estimate of the cost of macadamizing, paving, and curbing the street, are also inclosed, for the information of the Quartermaster-General.

All the roads leading to the New Albany National Cemetery are in an almost impassable condition during the greater part of the year, and it is absolutely necessary that at least one avenue leading from Vincennes street to the cemetery, a distance of about 2,400 feet, should be opened up, properly macadamized, paved, and guttered, in order to make the national cemetery accessible to the citizens of New Albany and visitors at all seasons of the year.

It is therefore respectfully recommended that the matter may be laid before the present Congress, with a view of obtaining a special appropriation of $11,794.09, to be expended, under the direction of the Quartermaster-General of the Army, in macadamizing, guttering, and paving the street, the work to be awarded to the lowest bidder after due advertisement for proposals, and in accordance with all the rules and regulations governing expenditures of this nature.

Should an appropriation be granted for this purpose, it is understood that the city of New Albany will, although the street is outside the city limits, bear the expense of grading and preparing the road-bed for macadamizing.

Without money furnished by the government the street will not be improved.

Very respectfully, your obedient servant,

JAMES A. EKIN,
*Assistant Quartermaster-General, U. S. Army.*

The QUARTERMASTER-GENERAL OF THE ARMY,
*Washington, D. C. (through Chief Quartermaster, Department East).*

As the city of New Albany has offered to make the grade for the road at its own cost, we recommend that the bill be amended as suggested by the Quartermaster-General, viz: Strike out the word "constructing" in the sixth line and insert "macadamizing", and add at the end of the bill the following: "And provided further, that the road-bed shall first be properly graded and prepared without expense to the United States." And as thus amended we recommend that the bill pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 643.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. HARRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 666.]

*The Committee on Military Affairs, to whom the subject was referred, submit the following report:*

The following letter from the Secretary of War and the accompanying papers state all the facts that have been brought to the attention of the committee. Upon these facts we report adversely, and recommend the indefinite postponement of the bill.

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WAR DEPARTMENT,
*Washington City, May* 20, 1882.

SIR: I have the honor to acknowledge the receipt of your letter dated the 25th ultimo, inclosing bill S. 666, Forty-seventh Congress, first session, requiring the proper accounting officers of the Treasury to pay John Wagner, late a private in Company F, Thirty-fifth Indiana Volunteer Infantry, extra duty pay, at the rate of forty cents per day, from the 21st day of May, 1862, to the 28th day of September, 1862, on account of services as clerk of barracks at Bardstown, Ky.

In reply to your request for such information in the case as the records of this department may afford, I beg to invite attention to the copies of reports from the Adjutant-General, dated April 19, 1875, and June 7, 1876, respectively, and copy of report of the Surgeon-General dated May 8, 1875, inclosed herewith.

From these reports it appears that the soldier was not performing extra duty during the period for which he claims pay. Said reports were furnished the Third Auditor of the Treasury, the officer charged with the adjudication of claims of this nature, when this claim was pending before that officer, and as will be seen from the accompanying copy of his letter dated the 18th instant, satisfied him that Mr. Wagner's claim for extra-duty pay from May 21, 1862, to September 28, 1862, was wholly destitute of merit.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. BENJAMIN HARRISON,
*of Committee on Military Affairs, United States Senate.*

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TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
*Washington, D. C., May* 18, 1882.

SIR: I have the honor to return the communication addressed you on the 25th ultimo by Hon. Benjamin Harrison, for the Senate Committee on Military Affairs, in which was inclosed Senate bill 666, "for relief of John Wagner."

I transmit the papers in his claim, and invite attention especially to three papers, viz: Indorsement by Assistant Adjutant-General Benjamin, June 7, 1876; report by Assistant Adjutant-General, April 19, 1875; and report by Surgeon-General, May 8,

1875. These three papers satisfy me that Mr. Wagner's claim for extra-duty pay service as clerk from May 21, 1862, to September 28, 1862, is wholly destitute of me

A soldier was by law entitled to extra-duty pay only while actually performing tra duty, and for not less than ten consecutive days.

Mr. Wagner was upon extra duty as *clerk* at Bardstown, Ky., until May 21, 1 and was duly paid therefor to and including that day.

May 21, 1862, he entered No. 1 general hospital at Bardstown as a patient, and continued until July 31, 1862.

August 19, 1862, he again entered that hospital as a patient. How long he remai on the latter occasion is not known, but he was doing duty in the provost guard August 31, 1862.

In the interval between the two periods in hospital, and after the later period, was put on duty in the provost guard at Bardstown, which guard was composed convalescents from the hospital, not yet able for active service in the field.

It is scarcely necessary to remark that provost-guard duty, even by an able-bod man, is regular soldier's duty, and gives no title to extra-duty pay.

It is probable that the testimony procured by Mr. Wagner, to the effect that he w upon extra duty during the period claimed, was given from the vague recollection witnesses that he was detached from his company to go on duty as a clerk at Bar town, and that he did not return to the company, but remained at Bardstown.

If he had been upon duty as a clerk subsequent to May 21, 1862, he could as read have drawn extra-duty pay, at the time, for the subsequent period, as for the per to and including that day.

Very respectfully,

E. W. KEIGHTLEY,
*Auditor*

Hon. ROBERT T. LINCOLN,
*Secretary of War.*

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*June* 7, 1876

Respectfully returned to the Third Auditor.

In the opinion of this office, corroborated by the inclosed record evidence, the lowing is a correct statement of the claimant's whereabouts during the period cove by his claim.

He was detailed for extra duty at the convalescent barracks at Bardstown in Ja ary, 1862. He performed such duty and was paid therefor up to May 21, 1862 ( copies of vouchers 96 and 101 of settlement 3295, '64, inclosed). On the 21st May, 1 he went to hospital, remaining therein until July 31, when sent back to provost gua He again entered hospital August 19, 1862, and was present again for duty with said provost guard on the 31st August (see report of the Surgeon-General her dated May 8, 1875, and report from muster-roll of patrol guard (convalescents) Bardstown, Ky., for July and August, 1862, embraced in statement of service of A 19, 1875, from this office.

In view of the foregoing this office declines to amend its record to show him on tra duty as clerk from 21st May, 1862, to September 28, 1862, as alleged.

S. N. BENJAMIN,
*Assistant Adjutant-Genera*

---

ADJUTANT-GENERAL'S OFFICE,
*Washington, D. C., April* 19, 187

SIR: I have the honor to acknowledge the receipt of your letter of the 9th da February, 1875, requesting a statement of service of John Wagner. The following formation has been obtained from the files of this office, and is respectfully furnis in reply to your inquiry:

It appears from the rolls on file in this office that John Wagner was a privat Company F, Thirty-fifth Regiment of Indiana Volunteers. On the muster-roll of C pany F of that regiment for the months of January and February, 1862, he is repo "absent on special duty"; all subsequent rolls on file to December 31, 1862, report present, without remark. Regimental return for July, 1862, (first on file) rep him "sick at Bardstown, Ky.," September, 1862; next on file, "detached duty Bardstown, Ky." Subsequent returns to December 31, 1862, not on file; mustered November 21, 1864, by reason of expiration of term of service. Regimental and c pany descriptive books furnish no further information. Muster-roll of patrol gu (convalescents) at Bardstown, Ky., for months of July and August, 1862 (only ro

same on file), reports John Wagner, private Company F, Thirty-fifth Indiana Volunteers, "present for duty."

I am, sir, very respectfully, your obedient servant,

*Assistant Adjutant-General.*

To THIRD AUDITOR, *Treasury Department.*

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(Transcript from records.)

WAR DEPARTMENT, SURGEON-GENERAL'S OFFICE,
RECORD AND PENSION DIVISION,
*Washington, D. C., May* 8, 1875.

It appears from the records filed in this office that John Wagner, private Company F, Thirty-fifth Regiment Indiana Volunteers, was admitted to No. 2 general hospital, Bardstown, Ky., May 20, 1862, from ——— for treatment for pneumonia, and was sent to barracks as provost guard May 26, 1862.

It appears from records of No. 1 general hospital, Bardstown, Ky., on file, that John Wagner, private Company F, Thirty-fifth Indiana Volunteers, was admitted to that hospital May 21, 1862, with *debilitas*, and was returned to duty ("to provost guard") July 31, 1862.

Again admitted to last-named hospital August 19, 1862, with remittent fever; disposition not stated. Records of Bardstown, Ky., on file, furnish no additional information respecting this man. Muster-rolls of hospitals, Bardstown, Ky., and regimental, and records Thirty-fifth Indiana Volunteers, are not on file.

By order of the Surgeon-General:

J. J. WOODWARD,
*Assistant Surgeon, U. S. Army.*

O

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 644.

# IN THE SENATE OF THE UNITED STATES.

MAY 23, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

# REPORT:

*The Committee on Military Affairs, to whom was referred Ex. Doc. No. 97, Senate, Forty-seventh Congress, first session, being the "message from the President of the United States transmitting a communication of the 1st instant from the Secretary of the Interior covering information respecting lands granted to the State of Oregon for the Willamette Valley and Cascade Mountain Wagon-Road Company, under date of February 8, 1882," have duly considered the same, and submit the following report:*

On February 1, 1882, the Hon. S. J. Kirkwood, Secretary of the Interior, addressed to the President a communication, with accompanying papers, all printed in said Ex. Doc. 97, so referred to your committee, calling attention to a communication addressed to the presiding officer of each house of Congress by his predecessor, Hon. Carl Schurz, on February 6, 1881, and accompanying papers, all of which were printed in House Report No. 322, Forty-sixth Congress, third session. Secretary Kirkwood says:

> As the action of Congress contemplated in my predecessor's communication has not yet been completed, I would respectfully request that the whole subject be again laid before that body for final disposition, in order that whatever of executive action may be required may be speedily taken, and great delay and hardship to public and individual interests be avoided.
>
> If Congress shall deem the evidence insufficient to justify the patenting of the lands under its former grant, and shall direct a proceeding by the Attorney-General for the purpose of testing the matter in the courts, this department will await the issue of such suit before proceeding farther.

The communication of Hon. Carl Schurz, Secretary of the Interior, referred to in letter of Secretary Kirkwood, was never printed as a separate document, but with all the accompanying papers will be found printed in said H. R. Report, 332, Forty-sixth Congress, third session, to which reference is hereby made.

In this communication Secretary Schurz said, among other things:

> In view of all the facts presented, and of the magnitude of the grant, and manifest want of the most ordinary good faith on the part of the grantee in securing and presenting the evidence for its appropriation, both the agent and the Commissioner of the General Land Office recommend the resumption of the lands, so far, at least, as the same have not been patented, or provision for such other measures of compliance with the terms of the granting act as shall assure the good faith of the beneficiary, before authorizing the further patenting of the granted lands.
>
> Fully concurring in the same views, I submit the matter for the action of Congress, and until that is determined upon, shall hold further proceedings suspended.
>
> Copies of all the papers referred to in this communication and in the schedule of the Commissioner's report of 4th ultimo are herewith transmitted.

The foregoing extracts from letters of Secretaries Kirkwood a Schurz contain all the recommendations made and all the suggestio as to Congressional action.

Your committee do not deem it necessary to copy and reprint all t laws, actions, reports, evidence, &c., touching this case, and will ref to said House Report 332, Forty-sixth Congress, third session, and sa S. Ex. Doc. No. 97, Forty-seventh Congress, first session, for same a as containing all the information obtainable.

The facts briefly are, that Congress, on July 5, 1866, passed a law e titled "An act granting lands to the State of Oregon to aid in the co struction of a military road from Albany, Oregon, to the eastern boun ary of the State." Congress on June 18, 1874, passed a law entitl "An act to authorize the issuance of patents for lands granted to t State of Oregon in certain cases."

On October 24, 1866, the legislature of the State of Oregon passed law as follows:

AN ACT donating certain lands to the Willamette Valley and Cascade Mountain Wagon-Road C pany.

Whereas the last session of the Congress of the United States passed a certain donating land to the State of Oregon, which act is hereby set forth, to wit: "An granting lands to the State of Oregon, to aid in the construction of a military r from Albany, Oregon, to the eastern boundary of said State."

(Here follows the act of Congress.)

SECTION 1. Be it enacted by the legislative assembly of the State of Oregon, T there is hereby granted to the Willamette Valley and Cascade Mountain Wagon-R Company all lands, right of way, rights, privileges, and immunities heretofore gran or pledged to this State by the act of Congress, in this act heretofore recited, for purpose of aiding said company in constructing the road mentioned, and described said act of Congress, upon the conditions and limitations therein prescribed.

SECTION 2. There is also granted and pledged to said company all moneys, la rights, privileges, and immunities which may be hereafter granted to this State, to in the construction of such road, for the purposes and upon the conditions and lim ations mentioned in said act of Congress, or which may be mentioned in any furt grants of money or lands to aid in constructing such road.

SECTION 3. Inasmuch as there is no law upon this subject at the present time, t act shall be in force from and after its passage.

Approved, October 24, 1866.

Hon. L. F. Grover, then governor of the State of Oregon, at differ times issued four several certificates in regard to the completion of t road to different points, the last of which certificates is as follows:

STATE OF OREGON,
*Executive Department:*

*To all to whom these presents shall come, greeting:*

I, L. F. Grover, governor of the State of Oregon, do hereby certify that this pla map of the Willamette Valley and Cascade Mountain Military Wagon-Road has b filed in my office by the Willamette Valley and Cascade Mountain Military Wag Road Company, and shows the location of route as actually surveyed (there being public surveys in connection with said route, to my knowledge) of the said Wi mette Valley and Cascade Mountain Military Wagon-Road, from Albany to the e ern boundary of the State, that part herein being from the 36.8th section to 44.87th sections inclusive, in line of said road, terminating at the eastern bound of the State of Oregon, as definitely fixed in compliance with the act of Congress proved July 5, A. D. 1866, entitled "An act donating lands to the State of Oregon aid in the construction of a military road from Albany, Oreg., to the eastern bound of said State," and with the act of the legislative assembly of the State of Oregon, proved October 24, 1866, entitled "An act donating lands to the Willamette Va and Cascade Mountain Military Wagon-Road Company," granting certain land the company herein mentioned; and that said road, by my direction, has been ex ined and accepted from the 36.8th section to the 44.87th section inclusive, termina

at the eastern boundary of the State of Oregon aforesaid. And I certify that the same has been completed according to said act of Congress.

In testimony whereof I have hereunto signed my name and affixed the seal of the State of Oregon, this 24th day of June, A. D. 1871.

[SEAL.]

L. F. GROVER,
*Governor of Oregon.*

Attest:
S. F. CHADWICK,
*Secretary of State.*

## Governor Grover also issued the following:

THE STATE OF OREGON:

*To all to whom these presents shall come, greeting:*

Know ye, that by an act of Congress of the United States of America, entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oreg., to the eastern boundary of said State," approved July 5, 1866, and an act amendatory of said act, approved July 15, 1870, the Government of the United States of America granted unto the State of Oregon in aid of the construction of a military wagon-road from the city of Albany, by way of Great Harney Lake Valley, to the eastern boundary of said State, three full sections of land of 640 acres each for each mile of road that should be constructed under the provisions of said grant, the lands to be selected along the line of the road, and within a distance of six miles on either side thereof; that the State of Oregon, by an act of its legislature entitled "An act donating lands to the Willamette Valley and Cascade Mountain Wagon-Road Company," approved October 24, 1866, donated and granted unto said Willamette Valley and Cascade Mountain Wagon-Road Company, a body corporate under the laws of Oregon, all the lands granted by the acts of Congress aforesaid and all lands that might be thereafter granted in aid of the construction of said military road; that said company, pursuant to the provisions of said grant, constructed said road from the city of Albany through the Great Harney Lake Valley and to the eastern boundary of the State of Oregon, a distance of 448 miles. And the road so constructed by said company has been duly and formally accepted by the Government of the United States, and by the State of Oregon, and in the manner by said acts of donation and grant prescribed; and the lands along the line of said road, to the extent of 860,000 acres, have, under said donation and grant, passed to and become the absolute property of said Willamette Valley and Cascade Mountain Wagon-Road Company, and are subject to said company's disposal.

In testimony whereof I, L. F. Grover, governor of the State of Oregon, have hereunto set my hand and caused the great seal of State to be affixed.

Done at Salem this second day of October, anno Domini one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

[THE SEAL OF THE STATE OF OREGON.]

L. F. GROVER,
*Governor.*

Attest:
S. F. CHADWICK,
*Secretary of State.*

## The Commissioner of the General Land Office issued the following certificate, approved by the Secretary of the Interior:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*May* 2, 1871.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 6 inclusive, is a correct and true list of the tracts of land within the six-mile limits set apart to the State of Oregon by the act of Congress approved July 5, 1866, entitled "An act granting land to the State of Oregon, to aid in the construction of a military road from Albany, Oreg., to the eastern boundary of said State," as amended by the act of July 15, 1870, being the vacant and unappropriated odd-numbered sections and parts of sections within the limits thereby granted.

And further it is shown by certificates on file of governor of said State, bearing date April 1, 1868, and September 8, 1870, and January 9, 1871, that said Willamette Valley and Cascade Mountain Military Road Company had completed their road from Albany to the thirty-six and eight-tenth section, distance three hundred and sixty-eight miles, in conformity with the provisions of the aforesaid acts.

I respectfully recommend that the same be approved subject to any valid interfering right which may have existed at the date of selection.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.]

WILLIS DRUMMOND,
*Commissioner.*

Approved.
C. DELANO, *Secretary.*

Up to June 19, 1876, on due selection, 107,893.01 acres had been patented to the company. Subsequently other selections of said land were made, for which patents are now demanded, viz:

| | Acres selected. |
|---|---|
| April 10, 1879 | 77,335.80 |
| April 10, 1879 | 73,670.06 |
| April 10, 1879 | 33,805.02 |
| June 24, 1879 | 78,223.84 |
| June 24, 1879 | 75,996.48 |
| August 11, 1879 | 76,204.51 |
| August 11, 1879 | 22,761.99 |
| Total selected and unpatented | 437,997.70 |

By deed bearing date August 19, 1871, and duly acknowledged, the Willamette Valley and Cascade Mountain Wagon-Road Company conveyed the entire grant of lands to H. R. W. Clarke.

September 1, 1871, Clarke conveyed by deed the same lands to David Cahn, in trust for T. Edgenton Hogg, Alexander Weill, and the said Clarke.

February 18, 1879, Hogg conveyed his interest to said Alexander Weill.

April 9, 1879, Sarah M. Clarke, widow of H. R. W. Clarke, and Fred. W. Clarke, son of H. R. W. Clarke, by separate deeds, conveyed their entire interests to said Weill; whereby the entire interest and title of the Willamette Valley and Cascade Mountain Wagon-Road Company became vested in and is now held and claimed by said Alexander Weill.

It appears that the Secretary of the Interior received the following communication, but at what date your committee are uninformed, and on the 20th August, 1878, by his chief clerk, referred the same to the Commissioner of the General Land Office. The letter bears date March 17, 1878, more than seven years after a greater portion, 368 miles, and nearly seven years after the last 80.7 miles of the said road were duly certified by the governor of Oregon to have been constructed in accordance with the act of Congress, and six years and seven months after the said company had conveyed its entire interest in said land grant to said H. R. W. Clarke.

Said communication, dated Prineville, Wasco County, Oregon, March 17, 1878, is signed "Elisha Barnes," and is addressed to Hon. Carl Schurz, Secretary of the Interior, and is printed in full in said House Report 332, Forty-sixth Congress, third session, pages 4 and 5, to which reference is made.

When this communication was made public, or brought to the knowledge of the present or any claimant of the land, does not appear, but it seems that no answer was made to the same by the Interior Department until October 2, 1879, more than eighteen months after its date, when the Acting Commissioner forwarded the following reply:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, D. C., October* 2, 1879.

SIR: Your letter of March 17, 1878, addressed to the honorable Secretary of the Interior, respecting the Willamette Valley and Cascade Mountain wagon-road, has been referred to this office.

In reply, I have to state that under date of June 24, 1871, the governor of Oregon formally certified to the completion of said road, in the manner prescribed by the granting act of July 5, 1866.

Upon that certificate the lands have been conveyed to the State, and it is not within the power of this department to inquire into the regularity of the governor's act.

Should you believe that the State authorities have been imposed upon, and that the road has not actually been constructed as required by the act referred to, you should present the facts to the governor, who would, I presume, institute appropriate inquiry in the premises.

You are in error in supposing that the duty of selling the lands embraced in the grant is cast upon the Secretary; it is imposed by the act upon the State.

Very respectfully,

J. M. ARMSTRONG,
*Acting Commissioner.*

ELISHA BARNES, Esq.,
*Prineville, Wasco County, Oregon.*

No further action seems to have been taken in the matter until April 27, 1880, when the Commissioner of the General Land Office addressed to the Secretary of the Interior the letter which is printed in said House Report 332, at pages 6 and 7, to which reference is hereby made.

On August 16, 1880, the Acting Commissioner of the General Land Office issued a letter to "Mr. W. F. Prosser, Seattle, Washington Territory," authorizing and directing him "to make a careful personal examination on the ground of the entire length of route," &c., and to make a report, &c., which is printed in said House Report, at pages 7 and 8.

Said Agent Prosser, on October 30, 1880, made a report, printed with accompanying affidavits, &c., in said House report.

Upon this report the Commissioner of the General Land Office, on December 4, 1880, submitted a statement to the Secretary of the Interior, accompanied by all the papers, Prosser's report, &c., printed in said House report.

Under date of January 6, 1881, the Secretary of the Interior submitted to Congress his communication, containing, among others, the recommendations and suggestions hereinbefore copied.

This communication was referred in Senate and House to the Committees on Military Affairs, respectively.

In the House the Committee on Military Affairs, through Mr. Upson, made the said report No. 332, Forty-sixth Congress, third session, February 22, 1881, containing some 41 pages, concluding as follows:

After careful consideration, your committee conclude—

1st. That the act of Congress approved July 5, 1866, vested a present title to the land in question in the State of Oregon.

2d. That by the act of the legislature, and the acts of the governor of Oregon, the title to said land was vested in the Willamette Valley and Cascade Mountain Wagon-Road Company.

3d. That by the deed of said company to Clarke, and the subsequent deeds from Clarke and others, the title to said land is now lawfully vested in the present claimant. Alex. Weill.

4th. That said title cannot be forfeited or annulled and reinvested in the United States, excepting by a judicial proceeding, and that the same has become a vested right which Congress cannot impair or take away.

Wherefore your committee recommend no legislation by Congress in regard to the matter of the said land grant submitted by the Secretary of the Interior for their consideration, and ask to be discharged from further consideration of the same.

Which report was ordered to be printed and recommitted to the same committee.

In the Senate no action was taken by the Committee on Military Affairs.

In the present Congress, the said Ex. Doc. No. 97 was transmitted to Congress and referred, in the House, to the Committee on the Public Lands; and in the Senate, to your committee.

In the House, the Committee on the Public Lands, through Mr. Strait on April 27, 1882, submitted to the House Report No. 1134, concluding as follows:

The acts of Congress, the act of the legislature of Oregon, and the certification of the governor of the State of Oregon, above recited, clearly show that, *prima facie*, the State of Oregon, or its assignee, according to the act of Congress of June 18, 1874, entitled to patents for said lands.

Your committee hold that the rights claimed in the premises are based upon former acts of Congress, and the acts and observances of the State of Oregon in pursuance thereof.

Wherefore your committee recommend no legislation by Congress in the premises and ask to be discharged from further consideration of the matter.

Upon presenting said report, the following proceedings were had:

WAGON-ROAD IN OREGON.

Mr. Strait, from the Committee on the Public Lands, to which had been referred Executive Document No. 97, relating to a grant of land to aid in the construction of a wagon-road in the State of Oregon, reported the same back and moved that the committee be discharged from its further consideration, and that the same be laid on the table.

The motion was agreed to.

In said House Report 332, Forty-sixth Congress, third session, will be found the evidence by affidavits of many parties sustaining and contradicting the report of agent Prosser, and tending to show compliance with the laws of Congress and of Oregon, and also to show non-compliance, evasion, &c.

The greater part of the work and expenditure in the construction of said road seems to have been done and made on the route over the Cascade Mountains.

In the opinion of your committee the executive department of the government had ample authority in law to thoroughly investigate the whole subject matter, and, if deemed necessary, to institute legal proceedings in the courts of the United States to secure a forfeiture of the said grant of lands, or any part thereof, for non-compliance with the terms, conditions, &c., of said grant, or for fraud, evasion, &c., on the part of the constructing company, without any legislation or instructions from the legislative department. It is simply impossible for your committee to make such an investigation as will justify definite action by Congress which would do justice and equity in the premises.

Believing, therefore, that the executive department has ample power and authority to pursue such a course as will do justice and equity in the premises, and without expressing any opinion upon the merits of the case, or the conclusions of law and facts arrived at by the House reports, your committee report back to the Senate said Executive Document as referred to them, with the recommendation that no action be taken by Congress, and that your committee be discharged from the further consideration thereof.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 645.

# IN THE SENATE OF THE UNITED STATES.

MAY 24, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# REPORT:

*The Committee on Claims, to whom was referred the petition of T. W. Tansell for relief, have duly considered the claim, and beg leave to report as follows:*

That about the year 1850 the claimant was employed on the Mexican Boundary Commission; that no law fixed his compensation, and it was understood that he should be paid according to the rates fixed by the executive department. Lieutenant Tillinghast, who was commissary and quartermaster of the commission, was relieved and the duties thereof were assigned to the claimant. He discharged those duties for over a year, and was ordered to Washington to settle his accounts. He claims now $83.65 and $60.65 for payments made by him on vouchers rejected by the Interior Department at the time. He claims also $4 per diem for personal expenses whilst he was acting as commissary and quartermaster, and whilst he was settling his accounts at Washington.

His claim was made at the time, and was rejected by the department, which was familiar with its merits. Besides, the compensation of the claimant was to be fixed by the executive department and was not regulated by law.

It is barely possible that the department may have done injustice to the claimant in rejecting his claim for extra allowance for personal expenses and subsistence, but this injustice is not shown. We are asked now to revise and reverse the action of the department on a matter over which it has not only full jurisdiction but absolute discretion. It would be unsafe to do so; and the impropriety of this is increased by the great lapse of time and the necessary obliteration of the memory of the facts and circumstances under which the department acted. Claims for extra compensation to officers and employés should always be scrutinized with the greatest jealousy and care, and never allowed except upon the clearest proof of their justice.

The committee recommend that the claim be disallowed and the petition be rejected.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 646.

# IN THE SENATE OF THE UNITED STATES.

MAY 24, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1448.]

*The Committee on Claims, to whom was referred the bill (S. 1448) for the relief of the estate of Thomas Jones, deceased, have considered the same, and respectfully report:*

Thomas Jones, the intestate of the claimant, was a citizen of Memphis, Tenn., in 1862, when the Federal forces took possession of that city. The proof is conclusive that he was throughout the war loyal to the United States.

He was the owner of a large number of brick, then in kiln. These brick were needed by the United States for building magazines, cisterns, fortifications, and chimneys of the barracks and hospitals. A large number were taken for this purpose and so used. What the exact number was, it is impossible now to ascertain. The claim is for 1,800,779, and there is the proof of three or four witnesses, certified to be reputable, to the amount.

J. C. Dougherty, special agent of the Quartermasters's Department, was sent to Memphis in 1873 to examine the claim. After a thorough examination, he reported that the number taken was equal to the number claimed. He reported, however, that it was impossible to estimate how many of these brick were taken by the Quartermaster's Department and how many by the Engineers. On this ground the Quartermaster's Department refused to allow any part of the claim, recommending application to Congress.

The mistake of Jones, in his lifetime, was always to apply to the Quartermaster's Department and not to the Engineers. He applied to General Sherman at the time, who it appears indorsed on his application that the claim could not be paid till the end of the war, like all other claims, according to the circumstances of each case.

There is proof of the sale of these brick by the Quartermaster's Department after the war, and there is also proof tending to show that they were less in number than the amount claimed, and reported to be correct by Dougherty. It is impossible now to fix the exact number. It appears, on the whole, that 1,500,000 would not be far from right, and is most probably the nearest approximation that can now be made to justice. This claim is for $10 per thousand. We think this charge too high. It appears that Jones gave $6 per thousand for them. We therefore recommend that he be paid that price for 1,500,000—say $9,000, and we recommend the passage of the bill amended so as to allow that much.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 647.

# IN THE SENATE OF THE UNITED STATES.

MAY 24, 1882.—Ordered to be printed.

Mr. SEWELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1705.]

*The Committee on Military Affairs to whom was referred the bill (S. 1705) for the relief of Elizabeth Stewart, have considered the same, and respectfully report:*

That upon a careful examination of the records, contained in a communication from the Adjutant-General of the Army, which is herewith submitted by the committee, and is made a part of their report, giving a history of the service of Lloyd Stewart, the committee are of opinion that a soldier, whose record is such as that disclosed in this case, has no claim upon the government. The following is the communication referred to:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*Washington, May 4, 1882.*

SIR: I have the honor to return herewith request of Hon. W. J. Sewell, of Senate Committee on Military Affairs, for opinion and such information as records contain, on bill S. 1705, directing payment by the Secretary of the Treasury to Elizabeth Stewart, widow of Lloyd Stewart, late private Company D, Second District of Columbia Volunteers, the amount of pay and bounty due him at the time of his discharge, and to inform you that the records of this office show Lloyd Stewart, Company H, Second District of Columbia Volunteers, enlisted August 24, 1862, for three years, deserted October 1, 1862, returned from desertion, March 24, 1863, was subsequently twice tried by field officers' court-martial (June 8, 1864, sentenced to forfeit $6.50 for one month; November 28, 1864, sentenced to forfeit $3 for one month), was tried by general court-martial May 31, 1865, at Alexandria, Va., for conduct prejudicial to good conduct and military discipline, in raising his musket in a threatening manner and attempt to shoot John H. Logan, a colored man in the service of the United States, and was sentenced to be dishonorably discharged the service with loss of all pay and allowances due or to become due him, and to be confined at hard labor at Fort Delaware, Del., for the term of thirty months.

The sentence was approved June 6, 1865, and its execution ordered in General Order 231, headquarters military governor of Alexandria, Va.

Upon the order of the President of July 18, 1865, remitting unexecuted portion of the sentence, Special Order No. 451, paragraph 8, of August 8, 1865, was issued from this office, remitting the unexecuted portion of sentence of confinement, and directing his release from confinement at Fort Delaware, and set at liberty, having been already dishonorably discharged.

It is my opinion that should the inclosed bill become a law it would not afford the relief contemplated, as by the terms of the sentence of the general court-martial all pay and allowances are forfeited.

I am, sir, very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General.*

The Hon. SECRETARY OF WAR.

In accordance with the opinion expressed, as based upon the foregoing communication from the Adjutant-General, the committee report back the bill adversely.

C

'H CONGRESS, } SENATE. { REPORT
1st Session. } { No. 648.

IN THE SENATE OF THE UNITED STATES.

MAY 24, 1882.—Ordered to be printed.

. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1778.]

*e Committee on Pensions, to whom was referred the bill (S. 1778) granting an increase of pension to Mrs. Marian A. Mulligan, having carefully examined the same, make the following report:*

hat James A. Mulligan, the husband of the petitioner, entered the tary service of the United States early in April, 1861, as colonel of Twenty-third Regiment Illinois Volunteers, a regiment raised prinlly by his personal exertions and popularity, and which did continuand gallant service during the late war. Colonel Mulligan, after ing for himself a brilliant reputation as a soldier and commander, mortally wounded at the battle of Winchester, Va., on the 24th uly, 1864, and died on the 26th of July, leaving a widow and three or children (daughters), of tender years, surviving him.

rs. Mulligan, upon application, was granted a pension of $30 per th, with the additional sum of $2 per month for each of the chil- till the age of sixteen. The daughters have now reached their enth year. Their father left no estate at his death, and Mrs. Mul- is without the means necessary for the support of herself and chil-. The present bill for her relief proposes to increase her pension to per month, and in its support she has submitted to your committee morial giving a brief sketch of Colonel Mulligan's distinguished ices. This memorial is not only a beautiful tribute to the memory er gallant husband, but presents her own claims to the generosity bounty of the government so much more forcibly than anything could say, that your committee make it a part of their report, as ws:

*e Committee on Pensions, United States Senate:*

NTLEMEN: It is proper that a brief memorial should accompany the bill for the of Mrs. Marian A. Mulligan, widow of the late Col. James A. Mulligan, in order you may appreciate fully the justness of this request, for an increase in her on from $30 to $100 per month. The claims of Mrs. Mulligan are based upon the ces rendered his country by her husband in the late war. In view of this fact erewith presents for your consideration a very brief synopsis of the life, charac nilitary record and patriotism of her gallant and patriotic husband.

l. James A. Mulligan, Colonel of the Twenty-third Illinois Volunteers, entered Army early in April, 1861, raised his regiment, which did continuous and gallant ce during the war. With the exception of a few months he was always in com- l of a brigade or division. His defense of Lexington, Mo., in September, 1861, one of the most gallant of the late war, winning for him the title of "Hero of ngton," and the admiration and esteem of the people of the entire country. On 0th of December, 1861, the following resolution was adopted unanimously by the se of Representatives of the United States.

"*Resolved*, That the thanks of Congress be presented to Col. James A. M and the gallant officers and soldiers under his command, who bravely stood against the greatly superior force, in his heroic defense of Lexington."

From 1861 to 1864, he was in active service in Maryland and Virginia. A battle of Lexington President Lincoln offered Colonel Mulligan a brigadier-commission, which he declined, as it would separate him from his own regim

On the 24th of July, 1864, while in command of a division at Winchester was mortally wounded, and died on the 26th of July.

No soldier from Illinois was ever more beloved than was Col. James A. M never one more sincerely mourned. President Lincoln made him brigadier-g gallant and meritorious services on that battle-field. In his last battle, when wounded, and when his devoted and gallant men crowded around him in th carrying him out of the enemy's lines, he gave his last command to them, words have become historical: "Lay me down and save the flag." The Hon Arnold, ex-member of Congress, in whose office Colonel Mulligan studied la ered before the Chicago Bar Association a beautiful tribute to the memory of Mulligan. A brief extract is made from it:

"There are volumes of eloquence in the seven words to which his utterance l immortality: 'Lay me down and save the flag.' It is of the flag, the emble country, and not of himself, that the bleeding soldier thinks. This is the of a spirit as gallant, as noble, as generous, and as patriotic as ever drew the a holy cause. But there is more in this short sentence than appears at first gl expresses the great need of the hour, the spirit of self-sacrifice—'Lay me d save the flag.' Would to God that this sentiment pervaded every heart in States. If this feeling had been universal our country would have been s peace long since restored. This sentiment must prevail and our country will b

Colonel Mulligan left a widow and three little daughters, the eldest three y and the youngest born five months after his death, without means for thei save the small pension of thirty dollars per month. To add to Mrs. Mulligan and distress, her brother, Lieut. James H. Nugent, of Company C, Twenty-f nois Volunteers, was killed on the same battle-field with that of her husband

In connection with this request it might be proper to state that in at le cases, namely, the widow of General James Shields, the widow of Fletcher and Lieut. Col. John Charles Blacks (heroes of the late war) have been very pensioned in the sum of $100 each per month. Mrs. Marian A. Mulligan p Congress will provide for her and her children in a manner that will keep th want. She hopes for a favorable consideration by your committee.

All which is respectfully submitted.

MARIAN A. MULL

NOTE.—Herewith is filed reports on divers bills, to which mention has been this memorial. Also a pamphlet containing numerous letters indicating the and standing of Mrs. Mulligan, written by some of the most prominent ci Illinois and other portions of the country.

While your committee think that the increase of pension p by the bill should not be granted, they are of the opinion, in the distinguished and gallant services performed by Colonel M and the necessities of his surviving family, that the pension sh increased to $50 per month.

Although not actually promoted brigadier till after he recei mortal wound, he almost continuously, from the date of his en the service, commanded either a brigade or a division, so that h occupied the position and performed the duties incident to th (though not holding the commission thereto) which would have his widow to a rating of $50 per month. While it would be estab a dangerous precedent to increase Mrs. Mulligan's pension to $ month, your committee think it entirely proper that it should creased to $50 per month. They accordingly recommend that be amended by striking out the words "one hundred" in the eig of the bill, and inserting in lieu thereof the word "fifty," and end of the bill add the following: "and that said increase of pensi effect from and after the passage of this act." As thus amended committee recommend the passage of the bill.

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1 CONGRESS, } SENATE. { REPORT
st Session. } { No. 649.

# IN THE SENATE OF THE UNITED STATES.

MAY 24, 1882.—Ordered to be printed.

WINDOM, from the Committee on Foreign Relations, submitted the following

# REPORT:

[To accompany joint resolution H. R. 54.]

*Committee on Foreign Relations, to whom was referred the joint reso- ion (H. R. 54) to authorize Lieut. Henry R. Lemly, United States my, to accept a position under the Government of the United States of lombia, have considered the same, and respectfully report:*

at the facts in this case are fully set forth in the following papers; as the joint resolution simply permits said officer to accept the posi- of instructor at the military school at Bogota, and does not author- m to accept any military rank from the Government of the United s of Colombia, the committee recommend its passage.

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WAR DEPARTMENT,
*Washington City, February 20, 1882.*

I have the honor to acknowledge the receipt of your communication of the 8th t, inclosing a copy of House resolution 54, being a joint resolution to authorize Henry R. Lemly, United States Army, to accept a position under the Govern- of the United States of Colombia, and asking to be informed of the views of this ment as to the propriety of the legislation proposed therein.

eply, I beg to invite attention to the inclosed report of the Adjutant-General of my, to whom the subject was referred, which furnishes the military history of nant Lemly, together with a full statement of the circumstances and authority which he first accepted a professorship of civil and military engineering in the al military school at Bogota, including the facts and circumstances connected he subsequent action of the Colombian authorities in advancing him to the posi- f superintendent of the academy and conferring upon him the honorary rank of l in the Colombian army, and the reasons which governed the action of the ent in revoking the leave of absence which had been granted to Lieutenant to enable him to accept the professorship above referred to, and directing him inate his connection with the military school at Bogota.

ill be observed that the action of the Colombian authorities toward Lieutenant is highly complimentary, and attests, in a forcible manner, the earnest appre- n of his service by that government; and as the zeal and ability which have l for him so flattering a recognition by the Colombian authorities are worthy of ndation, and as he went to Bogota with the approval of the President, the pas- f the above-mentioned resolution No. 54 is recommended, with an amendment ows:

*vided*, That the permission hereby given shall be held to terminate April 1,

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

. THOS. J. HENDERSON,
*Chairman Committee on Military Affairs, House of Representatives.*

ADJUTANT-GENERAL'S OFFICE,
*Washington, February*, 14, 1882.

SIR: I have the honor to return herewith the House resolution No. 54, authorizin Lieut. Henry R. Lemly, Third Artillery, to accept from the Government of the Unite States of Colombia "a position of instructor at the military school at Bogota," whic was referred by the Committee on Military Affairs, House of Representatives, for th views of the department as to the propriety of the legislation proposed therein, an by the Secretary of War to this office for report and previous history of the case.

Lieutenant Lemly graduated from the U. S. Military Academy, and was appointe second lieutenant Third Cavalry, June 14, 1872; was transferred to the Third Arti lery October 7, 1878, and promoted first lieutenant February 23, 1880. On April 21 1880, he was, by direction of the President, granted leave of absence for three year with permission to go beyond sea. The instructions of the President directing tha Lieutenant Lemly be granted this leave are indorsed upon a letter from D. H. Sta buck, stating that "Lieut. Henry R. Lemly, of the Army, is desirous to visit Sout America, and has the offer of a professorship of civil and military engineering in th national military school at Bogota, which he desires to accept for a term of thre years, provided he can obtain a furlough or leave of absence for that time." Upo this paper the President indorsed as follows: "April 19, 1880. Having fully considere this application, I direct that the leave asked for be allowed First Lieut. H. R. Lemly Third Artillery, for the purpose herein expressed."

Under date of September 30, 1881, the Acting Secretary of State transmitted to th Secretary of War a copy of a dispatch from the minister of the United States at B gota, stating that Lieutenant Lemly, "by his knowledge, tact, and devotion to dut has secured the approval of the Colombian authorities and respect of this communi to such an extent as to be advanced to the position of superintendent of the academ officially styled 'chief director of the studies of the school of civil and military eng neering,' and that as a special mark of distinction this appointment has been acco panied by a decree conferring upon him the rank of colonel in the Colombian army

Upon these papers the Secretary of War, on November 4, 1881, directed the Gener of the Army to cause Lieutenant Lemly to be informed that "the President, whi commending Lieutenant Lemly for the earnestness and ability which he has exhibit in the performance of the duties assumed by him under the Colombian Governmer directs that he be informed that a consideration of a clause of the Constitution of th United States [Par. 8, Sec. 9, Art. 1] not only prevents the acceptance by Lieutena Lemly of either of the offices named in the letter of the Secretary of War and the Na of the United States of Colombia, but compels the revocation of the order of th President bearing date April 19, 1880, granting to Lieutenant Lemly a leave of absen for three years for the purpose of accepting a professorship 'in the national school Bogota.'"

The instructions of the President and Secretary of War were communicated to Lie tenant Lemly by letter from this office dated November 17, 1881, and he was direct to terminate his connection with the military school at Bogota upon receipt of t letter, and to return to the United States as soon thereafter as practicable.

Subsequently, however, on November 17, 1881, the President, through the Secreta of War, directed "that Lieutenant Lemly be authorized to remain at Bogota, if he desires, on leave of absence a reasonable time, to allow application to be made on h behalf to Congress for its consent to his keeping position in national school," b that he must "immediately disconnect himself from any foreign official position an so remain until consent of Congress is obtained."

These instructions were communicated to Lieutenant Lemly by letter from this offic of November 18, 1881.

Under date of January 4, 1882, Lieutenant Lemly reports receipt of the instructio of November 18, 1881, and that in obedience thereto he had disconnected himself fro "any foreign official position," &c.

Very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General.*

The honorable SECRETARY OF WAR.

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WAR DEPARTMENT,
*Washington City, May* 5, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 25th ultim inclosing a copy of joint resolution (H. R. 54) "to authorize Lieut. Henry R. Lemly United States Army, to accept a position under the Government of the United State of Colombia," and requesting information as to the amount of pay Lieutenant Lem is now receiving from this government, and the amount to be paid to him by the Go ernment of the United States of Colombia.

In reply I beg to inclose herewith a report of the Paymaster-General, dated the 29th ultimo, giving the information asked for as to the amount of pay Lieutenant Lemly is receiving from this government, and to inclose also a communication from the Adjutant-General, dated the 4th instant, and its accompanying papers, which include a copy of the contract between Lieutenant Lemly and the Government of the United States of Colombia, in which is stipulated the amount of compensation to be paid to him by that government; said copy having been made from a copy transmitted to this department by the Department of State, under date of the 6th ultimo.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. WM. WINDOM,
*Chairman Committee on Foreign Relations, United States Senate.*

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WAR DEPARTMENT, PAYMASTER-GENERAL'S OFFICE,
*Washington, April* 29, 1882.

SIR: I have the honor to return herewith the letter of the Committee on Foreign Relations of the Senate of the 25th instant, with the accompanying bill and report, in reference to Lieut. Henry R. Lemly, United States Army, and to state in reply that Lieutenant Lemly is now receiving the sum of $68.75 per month, being half pay of his grade of first lieutenant of artillery, he being on leave of absence. As long as he shall continue on leave he will be reduced to half pay.

With reference to the last inquiry in the letter of the committee, "the amount he will be paid by the Government of the United States of Colombia should the permission asked be granted" this office is not able to respond.

Very respectfully, your obedient servant,

WM. B. ROCHESTER,
*Paymaster-General, U. S. A.*

The honorable SECRETARY OF WAR.

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ADJUTANT-GENERAL'S OFFICE,
*May* 4, 1882.

SIR: I have the honor to return herewith the communication from the chairman of Senate Committee on Foreign Relations, of the 25th ultimo, requesting certain information in the case of First Lieut. Henry R. Lemly, Third Artillery, in connection with a joint resolution (H. R. 54), and to inclose herewith a copy of Lieutenant Lemly's contract with the Government of the United States of Colombia received through the State Department.

This information as to the nature of the contract and the compensation Lieutenant Lemly was to receive from the Colombian Government was not received until after the report of this office of February 14, 1882 (printed in House report No. 483, a copy of which accompanies the letter from the Senate committee), had been made, and is the only information of record in this office touching the inquiry of the committee as to what amount Lieutenant Lemly "will be paid by the Government of the United States of Colombia should the permission asked for be granted."

Very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General.*

The honorable SECRETARY OF WAR.

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DEPARTMENT OF STATE,
*Washington, April* 6, 1882.

SIR: I have the honor to transmit herewith, in connection with previous correspondence from your department upon the subject, a copy of a dispatch from our minister resident at Bogota, of February 17 last, relative to the case of Lieut. H. R. Lemly, of the United States Army, who is now employed by the Government of Colombia; also a copy of Lieutenant Lemly's contract with that government inclosed with the minister's dispatch.

I have the honor to be, sir, your obedient servant,

FREDK. T. FRELINGHUYSEN.

Hon. ROBERT T. LINCOLN,
*Secretary of War.*

No. 10.] LEGATION OF THE UNITED STATES,
*Bogota, February* 17, 1882.

SIR: Inclosed copy of contract with the Colombian Government is respectfully forwarded with the view of affording the President and Congress the fullest information in the case of Lieutenant Lemly, United States Army, treated of in department dispatches Nos. 6 and 8.

It is my advice. The Colombian Government desires Lieutenant Lemly's services for the terms of the contract, and taking the view he was permitted to enter into it by the highest officials of our government at the time, claims it would be neither courteous nor proper to deprive it of his services before the expiration of the time for which it was made.

Have thought it but proper to impart this information to the department.

I am, sir, very respectfully, your obedient servant,

GEO. MANEY,
*Minister Resident.*

Hon. FREDK. T. FRELINGHUYSEN,
*Secretary of State, Washington.*

Be it known by this document that we, the undersigned, J. A. Echsverria, of the city of New York, in the name and by request of Francisco J. Cisneros, of the same city, now absent in the republic of the United States of Colombia, party of the first part, and Henry Rowan Lemly, of Washington, D. C., party of the second party, have entered into a contract, under the following conditions:

ARTICLE THE 1ST. Francisco J. Cisneros, and in his name J. A. Echserria, do here declare: Firstly, that by the law No. 69 of 1877 of the U. S. of Colombia, it was ordered that a school of civil and military engineering should be established in the city of Bogota, capital of the republic; secondly, that in fulfillment of said law and of the decree issued by the executive power of the republic, dated at Bogota the 26th of November, 1879, the school of civil and military engineers must have been established the 2nd day of the present month, in the building known by the name of "Candelaria"; thirdly, that according to article 3rd of said decree, besides the director, and several professors and employees, there must be at the school two foreign professors, with the salary and emolument agreed upon in their contract, to teach military science and any other one that may be recommended to them, specially staff and artillery instruction; and, fourthly, that Francisco J. Cisneros has been expressly commissioned and authorized by the executive of the republic of Colombia to engage in the United States of America the two above-mentioned professors, under the instructions received by him from the secretary of the War and Navy.

ARTICLE THE 2ND. In virtue of his authorization, Francisco J. Cisneros, in the name of the Government of Columbia, does hereby engage Mr. Henry Rowan Lemly for one of the two professorships of military science in the school of civil and military engineering of Bogota, with the salary of three thousand five hundred dollars per year, payable in monthly installments of $291.66⅔ each; in lawful gold or silver money.

ARTICLE THE 3RD. The salary of Mr. Henry Rowan Lemly will run from the date of his departure from New York for Savanilla and Bogota; this having to take effect with the shortest possible delay.

ARTICLE THE 4TH. Besides the above-mentioned salary, the Government of Colombia will pay the passage out and all regular traveling expenses of Mr. Lemly and wife from New York to Bogota.

ARTICLE THE 5TH. This contract will be for the term of three years from the date of the departure of Mr. Henry R. Lemly from New York.

ARTICLE THE 6TH. Mr. Henry R. Lemly ought to oblige himself to take charge of such classes as will be allotted to him, according to articles 8th, 9th, and 10th, of the decree of November 26th, 1879—to give the theoretical and practical instruction required in each branch of teaching—to comply with the rules and regulations of the schools, and to fulfil, in a word, all and every duty of his professorship, with the assidnity, steadiness, and intelligence that the Government of Colombia expects from him.

ARTICLE THE 7TH. Mr. Henry R. Lemly, on his part, accepts the salary of three thousand and five hundred dollars per year, payable in monthly installments of an equal amount, and the payment of his passage and travelling expenses from New York to Bogota, that the Government of Colombia, represented by Mr. Francisco J. Cisneros, offers him to pay; acknowledges that he is instructed of articles of the decree of Nov'er 26th, 1879, alluded to in the foregoing paragraph; obliges himself to teach scientifically and practically the subjects allotted to him, specially in relation to military science; to comply with the rules and regulations enacted by proper authority for the government of the school; and, finally, to fulfil all the duties deriving from his contract, during its term of three years, to the best of his abilities.

ARTICLE THE 8TH. It is understood that in case Mr. Henry R. Lemly, for any cause

whatever, should be called to take charge of a single class, the reduction spoken of in article 18th of the decree of Nov'er 26th, 1879, will not apply to him, and his full salary will be in such case paid to him, as agreed upon in this covenant.

ARTICLE THE 9TH. This contract will be considered as provisional until the arrival of Mr. Henry R. Lemly to Bogota, when it will be ratified by the secretary of the army and navy.

Both parties being agreed in the foregoing articles, sign two copies of the same tenor, which they reciprocally exchange in the city of New York, &c.

(Signed) JOSÉ A. ECHSVERRIA. [SEAL.]
(Signed) HENRY R. LEMLY, [SEAL.]
1 *Lieut. 3d U. S. Art'y, Despacho.*

Witness:
L. DEL MONTE.
JOHN S. SLAGLE.

CONGRESS, } SENATE. { REPORT
Session. } { No. 650.

# IN THE SENATE OF THE UNITED STATES.

MAY 24, 1882.—Ordered to be printed.

LATER, from the Committee on Indian Affairs, submitted the following

# REPORT:

[To accompany bill S. 1923.]

*mmittee on Indian Affairs, to whom was referred the petition of Louisa Boddy, of Oregon, praying comenpsation for losses and injuries ted by the Modoc Indians in the year* 1872, *have had the same under ideration, and submit the following report:*

pears by the petition of Mrs. Louisa Boddy that her husband, to- with a son-in-law and one grown son, became settlers upon the lands of the United States, in the valley of Lost River, in Lake , Oregon, some four months prior to the commencement of the odoc Indian war, which said war began November 29, 1872, and ated in June, 1873. Long prior to said settlement the Indian title lands had been extinguished by a treaty with the Klamath, Mo- d other Indians, which said treaty was signed October 14, 1864, ified by the United States Senate July 2, 1866. Said lands were rds surveyed by the United States and opened to settlement in

he 6th of August, 1872, the Boddy family, consisting of the hus- the petitioner, her son-in-law, Nicholas Schira, and wife, who e daughter of the petitioner, and her two sons, one a minor, made ent on said lands.

ne 29th of November, 1872, the government undertook, with an in- te military force, consisting of James Jackson, First United States y, and 35 men, to remove by force the Modoc Indians from said lands, where they had been roaming contrary to the injunctions Indian agent having charge of them, to the Klamath reservation. n insignificant force could not and did not have any effect to in- e the Indians. The result was that Indian hostilities were at recipitated, and a most cruel slaughter was immediately com- by those Indians upon the unoffending and unsuspecting set- Lost River Valley, which slaughter began immediately after the upon Captain Jack's camp by Lieutenant Jackson on the morn- November 29, 1872, at early light. Among those who were mas- were the husband of the petitioner, her two sons, and her son-in- o were peaceably pursuing their usual vocations.

petitioner further states in a graphic manner her discovery of the forms of her husband and sons, stripped and mutilated, and how, with fear, she and her daughter fled at once to the neighboring ins, where, without food or shelter, and thinly clad, with snow ground, they remained for two days before daring to make their any friendly shelter.

After the massacre the Indians destroyed and carried off all the per sonal property of the families, embracing horses, sheep, hogs, cattle poultry, clothing, provisions, &c., and also including $829 in gold and silver coin, and burned the houses. The mutilated bodies of those who were killed were afterwards recovered and buried at Linkville by the Oregon Volunteers.

By this disaster the petitioner was reduced at once from a condition of comparative affluence to one of poverty and wretchedness.

The petioner duly presented her claim for property thus stolen and destroyed, amounting to $6,180, in due form to the Indian Bureau, and placed a duplicate copy thereof in the hands of the local Indian agent No relief, however, of any kind has ever been received by her. She therefore appeals to Congress.

This petition is sustained by the names of one hundred substantial citizens of Oregon and residents of Lake County and vicinity, including Jesse Applegate, one of the Modoc peace commissioners; L. S. Dyar, Indian agent at the time of the massacre; J. H. Rook, Indian agent at the time of signing the petition; S. B. Cranston, register of the United States land office; and Quincy A. Brooks, assistant quartermaster-general of Oregon Volunteers, who certify "that the facts set forth in said petition are correct and true."

In forwarding to the Indian Department the claim of Mrs. Boddy for depredations committed by the Modoc Indians, as before stated, the local Indian agent, Mr. Dyar, wrote as follows to the Commissioner of Indian Affairs:

KLAMATH AGENCY, OREGON,
*April* 24, 1876.

SIR: I inclose herewith papers relating to claims of Mrs. Louisa Boddy and Mrs. Kate Nurse, for depredations committed by the Modoc Indians.

I have examined them, and find that the prices charged for hay, flour, groceries, and sheep are not above the ruling rates at the time and place of the depredations. I am knowing to the fact that these claimants were great sufferers from the Modocs; that their husbands and other members of their families were murdered, and much of their property destroyed by these Indians.

I am unable to present the case to the Indians, as required in article 4 of Rules and Regulations of the Department relative to such claims, as the perpetrators are now located upon the Quapaw Reservation in the Indian Territory.

Very respectfully, your obedient servant,

L. S. DYAR,
*United States Indian Agent.*

Hon. J. Q. SMITH,
*Commissioner of Indian Affairs.*

In addition to the foregoing are affidavits of four disinterested citizens Mr. Hartery, John Fritz, Dan Calwell, and W. S. Bybee, who were the nearest neighbors to the Boddy settlement, who testify to the amount and character of the property destroyed as near as the circumstances of the case would admit. Mrs. Boddy's own affidavit, made in this city during the present session of Congress, also gives further particulars and satisfactory account of all the circumstances of her losses.

In view of the premises, and in consideration of the whole case, the Commissioner of Indian Affairs, on request of the Secretary of the Interior, communicated, under date of March 10, 1882, the following letter which has been submitted to the Committee on Indian Affairs, to wit

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
*Washington, March* 10, 1882.

SIR: I have the honor to be in receipt, by department's reference for report, of petition (herewith inclosed) to Congress by Mrs. Louisa Boddy, of Lake County, Oregon, praying for compensation for losses and injuries inflicted by Modoc Indians i

November, 1872. A duplicate of this petition, together with other papers in the case (some of which had before been in this office, and were submitted to the department June 12, 1876, for transmittal to Congress), were also filed in this office yesterday by J. F. Kinney, attorney for Mrs. Boddy. These papers are also herewith inclosed. Among them is a copy of the report of this office, above referred to, of June 12, 1876, upon the claim of Mrs. Boddy, which had been filed in this office for preliminary examination under the laws and departmental regulations governing the settlement of Indian depredation claims, and, as will be seen, upon the papers then before one of my predecessors, he arrived at the following conclusion:

"There is, therefore, no doubt as to the fact of the depredation, but there is no reliable evidence in the case to show the extent of it, or the amount and value of the property lost. I cannot, therefore, do otherwise than recommend a disallowance of the claim. The depredation was committed in November, 1872, and the claim was not presented for adjustment until April last [1876], and is therefore barred."

By reference to the declaration and proofs of the claimant upon which my predecessors acted (see papers marked A, herewith), it will be seen that four witnesses to the depredation were M. Hartery, John Fritz, Dan Calwell, and W. S. Bybee, who could not swear that they knew of their own personal knowledge that the identical property enumerated in the schedule sworn to by Mrs. Boddy was the property destroyed by the Modocs, but they swear they were neighbors of William Boddy, deceased, and know that "valuable property belonging to said affiant (Louisa Boddy) was destroyed, injured, or taken away" by the hostile Modocs, and that "they believe the foregoing statement of articles destroyed, injured, or taken away by said Indians, together with the value thereof, and of each and every item of said account, as set forth in the foregoing affidavit (the affidavit of Mrs. Boddy), to be correct and true."

Their inability to swear with more particularity and the impracticability of obtaining more specific evidence are explained by the petition of Mrs. Boddy to Congress and by her affidavit dated 5th instant in this city, which, of course, were not before my predecessor when he acted on the case. Particular attention is invited to these. They show that the husband of Mrs. Boddy, her two sons, aged respectively eighteen and twenty-two years, and her son-in-law, who constituted all the men in their immediate settlement, and who perhaps alone could have sworn to the exact amount of stock owned by Mr. Boddy and the exact number destroyed, stolen, or lost, were killed on the 29th of November, when the loss occurred; that her daughter (her only remaining child) and herself, upon seeing the Indians stripping the dead bodies of her son and son-in-law, fled to the mountains to keep from being murdered, and remained there two days without food or shelter and thinly clad, with snow on the ground; that the witnesses, W. S. Bybee and Dan Calwell, who were her nearest neighbors, lived three miles south of the Boddy settlement, and that Mr. Hartery and John Fritz, who were her nearest neighbors on the north, lived five and ten miles distant, respectively, and that these witnesses, as soon as practicable after the massacre, assisted in collecting the scattered stock belonging to the Boddy family; that they were frequent visitors at the home of Mrs. Boddy before the massacre and depredation, and that "each of the said men had a good idea of the amount and value of the property and stock" owned by the family, and also were the only persons, except Mrs. Boddy and her daughter, who had knowledge of the amount of stock recovered.

These papers also show that William Boddy and family removed from Roseburg, Oreg., where he had been engaged in merchandizing, to the farm occupied by them when he was killed, only about four months before the massacre, taking with him the remnants of a stock of goods pertaining to a general country store, about three thousand sheep, about seventy-five head of cattle, and about thirty-five head of horses. The claim made by Mrs. Boddy includes only five horses, one cow, and five hundred sheep, the inference being that the balance of the stock was recovered.

The remainder of the claim as presented to this office for settlement embraces such articles as would naturally be found in the house of a man engaged as Mr. Boddy had previously been, and was at the time of his massacre.

The respectability of Mrs. Boddy, and the truthfulness of her statement as to the loss of property, is abundantly attested by the signatures of about one hundred persons attached to her petition, and among them that of L. S. Dyar, who was the agent for these Indians in 1872, when the depredation was committed, and who, under date of April 24, 1876, in reporting to this office upon this claim, said that the "prices charged for hay, flour, groceries, and sheep are not above the ruling rates at the time and place of the depredations." In that letter he also states, from personal knowledge, that Mrs. Boddy was a great sufferer from the Modocs, and that much of her property was destroyed by these Indians.

From the evidence now before me I am satisfied that the property mentioned in the schedule found in the paper marked A belonged to William Boddy (husband of Mrs. Louisa Boddy) in his lifetime, and was lost or destroyed as stated in the papers in the case; but the vagueness as to the amounts of quite a number of the articles mentioned leads me to think that in all probability the actual value of some of these articles, at least,

has been overestimated, and that the sum of $5,400 would cover the loss, and I therefore respectfully recommend that the papers herewith be returned to the Senate Committee on Indian Affairs, with the request that an appropriation of that amount be made in favor of Mrs. Louisa Boddy, widow of William Boddy, deceased.

It is proper to state that, in view of the fact that ever since the Modocs, who perpetrated the depredation under consideration, were removed to the Indian Territory, they have been regarded by this office and by Congress as having forfeited all right to any of the benefits inuring to other Modocs under the treaty of October 14, 1864, with the Klamath, Modoc, and other Indians (16 Stat., p. 707), and have been assisted in self-support by a small gratuity annually appropriated by Congress, so that it would seem that the amount which may be appropriated for the relief of Mrs. Boddy should be taken from the public funds. It may be proper to state, also, that the limitation of time (three years) fixed by the seventeenth section of the act of June 30, 1834 (4 Stat., p. 732), within which Indian depredation claims may be presented, no longer obtains, as this limitation is omitted in the Revised Statutes.

Since the foregoing was written, the attorney for Mrs. Boddy has presented a brief in support of the claim, which is also herewith transmitted.

Very respectfully, your obedient servant,

H. PRICE,
*Commissioner.*

Hon. S. J. KIRKWOOD,
*Secretary of the Interior.*

From all the facts in this case it is quite apparent that the massacre of the settlers on Lost River by the Modocs, on the 29th of November, 1872, was not the result of an ordinary outbreak of those Indians, but the direct result of the attack of the United States troops upon their camp on the morning of that day, with inadequate force for the purpose of their removal to the Klamath Reservation, whither they refused to go, which attempt upon the part of the military authority was made without notice to the settlers scattered along Lost River. Your committee think that this fact makes this an exceptional case, and gives this claimant an equitable right to relief, and therefore fully concur with the Commissioner in his recommendation that the sum of $5,400 be appropriated for the relief of Mrs. Louisa Boddy, widow of William Boddy, deceased, in full compensation of her losses as hereinbefore stated, and therefore report for that purpose the accompanying bill, and recommend its passage.

: CONGRESS, } SENATE. { REPORT
t Session. } { No. 651.

# IN THE SENATE OF THE UNITED STATES.

MAY 25, 1882.—Ordered to be printed.

ACKSON, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1523.]

*Committee on Claims, to whom was referred the bill (S. 1523) to pro-e for the reimbursement of costs and expenses in certain judicial ceedings and for the relief of George C. Ellison, having examined the e, make the following report:*

at the facts of the case, as they appear from the papers on file, are ctly set forth in the report (No. 555) of the House Committee on is to the present session of Congress, as follows:

t. The committee find as facts established in this case—

That said George C. Ellison was appointed as chief engineer of the House of entatives of the Forty-fourth Congress, after and pursuant to the result of a nt, critical, and competitive examination as to character and qualifications, at he was not appointed for political reasons.

That he entered upon the discharge of his duties and was proven to be a careful, le, and proper person for the position of chief engineer.

That in the discharge of his duties under such appointment he was required to is constant and unremitting attention to his responsible trust. See report and d letter of Capt. Wm. W. W. Wood, chief of Bureau of Steam Engineering, dated 23, 1880, as follows:

"WASHINGTON, D. C., *March* 23, 1880.

EAR SIR: I have the honor to acknowledge the receipt of your letter of 22d t, requesting me to furnish you with a verified statement as to my knowledge of eam apparatus, &c., for ventilating and heating the House of Representatives, on of rooms, and the care and attention necessary for security, &c., on the part chief engineer of the same.

reply I have respectfully to inform you that some time since it became necessary to familiarize myself with the character and location of this heating and venti- apparatus above referred to in detail, the location of the boiler and engine-, passages, and chambers in which are erected the heating batteries or radiators, ogether with the fan, forcing and exhaust blowers; all of which are located in b-basement of the south wing of the Capitol building.

he care and attention necessary for security in the management of this apparatus in operation demand at all times the most rigid and careful conduct of compe-ten, under the supervision of skillful and experienced engineers, especially in the -room, where neglect in this respect by absence or incompetence might result in disaster and loss of life and government property by explosion, perhaps equal consequences to the discharge of a mine of gunpowder.

onstant and unremitting attention on the part of the chief engineer and his sub-ates is the only guarantee against accidents and the disastrous consequences t might result from explosion or derangement.

hat under no circumstances should the engineer, upon who devolve for the time the responsibility, care, and management of this department, absent himself ut proper and competent relief, that the supervision necessary to maintain its ncy and avoid danger be at all times exercised.

"I am, respectfully, your obedient servant,

"WM. W. W. WOOD,

"*Chief Engineer, late Engineer-in-Chief, U. S. Navy.*

on. RICHARD CROWLEY,

"*United States House of Representatives.*

"DISTRICT OF COLUMBIA, *ss:*

"In verification of the above, the writer, Wm. W. W. Wood, personally appeared before me, notary public in and for the District of Columbia, and states that he is at present a chief engineer in the Navy of the United States, and late Engineer-in-Chief of the Bureau of Steam Engineering of the Navy Department, and the opinion given in the above letter of reply to the Hon. Mr. Crowley, made at the request of the latter, is true to the best of his knowledge and belief.

[SEAL.] "A. C. RICHARDS,
"*Notary Public.*"

(4.) That during said Ellison's term or occupancy of the office of chief engineer, to wit, on the 7th day of March, 1877, and at various times prior thereto, one David Small, a former employé in Ellison's department, made threa s of killing said Ellison, or of doing him great bodily harm, because he thought Ellison had been instrumental in procuring his discharge; that the reason of the discharge of said Small was his intemperance and improper conduct, unfitting him for the discharge of his duties, as shown by the letter of Hon. George M. Adams, Clerk of the House of Representatives, and by letter of Edward Clarke, Architect of the United States Capitol, dated May 4, 1880, annexed and marked Exhibits A and B, respectively.

(5.) That on the 7th day of March, 1877, said David Small, while under the influence of intoxication (see affidavits of Wm. M. Long, May 19, 1879; of Joseph Reese, May 20, 1879; and of Eppa Norris, May 30, 1879, annexed, and marked C, D, and E, respectively), forcibly invaded the engine-room in the sub-basement of the Capitol, where said Ellison was engaged in the discharge of his official duties as an officer of the House of Representatives, and renewed threats upon and against Ellison, which he, said Small, had repeatedly made to others, and which had come to the knowledge of Ellison. (See affidavit of Wm. M. Long, Joseph Reese, *cit. supra*, and of Capt. Robert H. Ryan, May 27, 1870, and of Rev. Thos. W. Conway, of April 29, 1880, annexed and marked Exhibits F and G, respectively.) That Ellison, under the circumstances, had grave reason to apprehend assassination or great bodily harm from said Small at this time; that Ellison endeavored to avoid both conflict and controversy with said Small on this occasion; that Ellison retreated from Small, who was shown to be physically a much larger man than Ellison; that, according to the affidavit of Eppa Norris, the only witness to the encounter, Small continued to advance on Ellison with threats, his right hand in his pocket behind, as if to shoot, and his left hand violently gesticulating; that Ellison picked up a wooden ax-handle and ordered Small out of the engine-room; that Small refused to go, when Norris, the affiant, "jumped aside, thinking Small was going to shoot," and Ellison, being unable to prevent Small's continued threatening advances as if to shoot him, struck Small one blow with the ax-handle and knocked him down; that Small got up and left the engine-room, making further threats against Ellison as he departed; but Ellison made no further attempt to strike Small; that Small's conduct was violent and unjustifiable, and, by his interference with Ellison while on duty as chief engineer, he imperiled the property of the government, and even the lives of Ellison and other citizens, officials, and members of Congress in the Capitol to a degree that was highly perilous. (See affidavit cited, testimony in case of The United States *vs.* Ellison, and letter of Wm. W. W. Wood, chief of Bureau of Steam Engineering, given above.) That for these reasons the act of Ellison was in the line of his duty to protect life and property, both of himself and others, members of the House; that at the time of this transaction Ellison was acting under the orders or rules of the House of Representatives and of his superior officers in remaining on duty as such chief engineer. (See House Rules and Regulations for Employés and Officers.)

(6.) That for several days after the encounter aforesaid, said Small went about, continuing dissipated, and in about fifteen days from said 7th day of March, died.

(7.) That thereupon said Ellison voluntarily surrendered himself for trial and was indicted for the murder of said Small, and was thereupon suspended as chief engineer, April 1, 1878.

(8.) That in the latter part of December, 1877, an assistant of Mr. Ellison was appointed by the Speaker of the House as Ellison's successor.

(9.) That after two trials, both of which resulted in a failure to convict Ellison o murder or of any other lesser offense, a *nolle prosequi* was, with the approval of th court and upon the recommendation of the President of the United States, entered o the 20th of November, 1878. (See letter of Rev. Stephen H. Tyng, jr., to Rev. Dr Lanahan, dated November 13, 1878, and recommendation entered thereon by Presi dent Hayes, annexed and marked Exhibit H.)

(10.) That not only was it shown that Ellison acted in self-defense, but Judge An drew Wylie, who tried the case, in a conversation with Rev. Dr. Lanahan, but mor especially in a letter to the Hon. Stephen L. Mayham, filed in evidence annexed an marked Exhibit I, *clearly and distinctly states that Ellison acted in self-defense.*

(11.) That during the pendency of said trials, and up to the 19th of March, 1879

Ellison was willing to discharge the duties of his office as chief engineer. That up to the filing of Ellison's petition no official notice of discharge has been given to Ellison.

(12.) That on or about the date last aforesaid Ellison was duly appointed to and entered upon the discharge of his duties as clerk to the Committees on Agriculture, Manufactures, and Militia of the House of Representatives.

(13.) That in and about his defense of said prosecution under such indictment said Ellison was necessarily subjected to great cost and expense. (See summary of expenditures.)

(14.) That by reason of his suspension from the discharge of his duties as chief engineer, from April 1, 1877, to await the result of the proceedings against him, said Ellison was deprived of his pay and salary as such officer, which salary was fixed at the sum of $1,700 a year.

II.

Upon the facts aforesaid, as established by documentary and other proofs before us, the committee find, as resulting from these facts, the following conclusions:

(1.) That George C. Ellison, on the 7th day of March, 1877, being on duty as chief engineer of the House of Representatives, and acting under the orders, rules, and regulations of the House, was justified or exonerated from blame in defending himself, his position, his duties, and the momentous trusts confided to him, even to the extent of knocking down Small, as he did. That he was not guilty of any crime, but was acting properly, as the emergency seemed to require, as an officer and employé of the House. But one blow was struck, and that in defense, and this defense of himself was in defense of the House likewise; and no malice or misconduct as an officer or as a man was shown on Ellison's part. (See letters of Rev. Dr. Lanahan of May 6, 1879, with addition by Hon. Andrew Wylie, the judge before whom Ellison was tried, and of Judge Wylie to Hon. Stephen L. Mayham, dated March 22, 1880, annexed and marked Exhibit J.)

(2.) That it is the duty of the House of Representatives to protect and preserve the safety and efficiency of its officers and employés so long as they are acting in the line of their duties, or whenever they may be required, in great emergencies, to do acts not held or found to be unlawful, for their personal and official protection, while in the discharge of their duties, or to enable them to properly discharge such duties; and that such duty to protect and defend its officials and employés extends to the duty of reimbursing such officials and employés for any and all expenses properly and necessarily incurred in and about such duties, or lawful, or unusual and not unlawful acts demanded by the exigencies of the situation for the proper and efficient discharge of their duties; and we consider this principle as justly applicable to Ellison's case.

The following precedents fully warrant this rule, and in the case acted upon by the House favorably on the 17th of February, 1881, the principle is carried to the case of acts held by the Supreme Court to be unlawful.,

[PRIVATE—No. 29.]

AN ACT for the relief of General John C. McQuiston and Jeremiah D. Skeen, of Indiana.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to John C. McQuiston and Jeremiah D. Skeen, of Indiana, out of any money in the Treasury not otherwise appropriated, the sum of two thousand dollars, to reimburse them for expense incurred in satisfaction of a judgment recovered against them in the Ripley circuit court in favor of Jerome Huntington, upon a charge of false imprisonment, founded upon an arrest made by the said John C. McQuiston as provost-marshal of the fourth district of Indiana, and Jeremiah D. Skeen, his deputy, while acting under the order of General Baker, the provost-marshal of the State of Indiana, and Brigadier-General Wilcox.

Approved February 27, 1871.

(16 U. S. Stat., 653, chap. 75.)

[PRIVATE—No. 34.]

AN ACT making an appropriation to satisfy a judgment obtained against Grenville M. Dodge, late an officer of the United States, and others, for acts done by them in the line of their duty.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the sum of five thousand dollars, or as much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to enable the Secretary of War to satisfy a judgment obtained against

Grenville M. Dodge, late an officer of the United States, and others, for acts done b them in the line of their duty, under orders from their superior officers, and to defra the costs of defending the suits at law in which such judgment was recovered.

Approved May 6, 1870.

(16 U. S. Stat., 638, chap. 97.)

[PRIVATE—No. 101 ]

AN ACT for the relief of the family of the late John T. King and of L. B. Cutler.

Whereas John T. King, lately employed as a carpenter and cabinet-maker about th Capitol, while in the discharge of his duties, was killed by an explosion of gas in th closet under the eastern stairway of the Senate, leaving a wife, three children, tw grandchildren, and a mother-in-law without any means of support; and

Whereas L. B. Cutler, principal assistant in the folding-room of the Senate, was s injured, at the same time and under the same circumstances, as to be disabled for life, leaving a wife without means of support, and a mother to whose support he has partly contributed: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of Americ in Congress assembled*, That the sum of three thousand dollars for the aid and support of the family of the late John T. King, and the further sum of three thousand dollars for the aid and support of L. B. Cutler, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid to the Secretary of the Interior in trust for the above mentioned purposes, who may, at his discretion, pay the same to the respective parties in annual installments, or all in one payment, or invest the same for their use and benefit, as he may think most expedient.

Approved July 19, 1876.

(19 U. S. Stat., 455, chap. 215.)

On March 3, 1877, second session Forty-fourth Congress, Journal of the House, page 678, Mr. Knott (the rules having been suspended for the purpose) submitted the following resolution, which was received, considered, and agreed to, viz:

"*Resolved*, That the Sergeant-at-Arms of the House be hereby authorized to retain counsel in the cause in which Hallet Kilbourn is plaintiff and John G. Thompson and others are defendants, for the purpose of prosecuting or defending, as the case may be, the cause aforesaid in the Supreme Court of the United States."

On June 23, 1874, House Journal, first session Forty-third Congress, page 1321, Jeremiah N. Wilson, by unanimous consent, submitted the following resolution, which was received, considered, and agreed to, viz:

"*Resolved*, That the House assume the defense of the Speaker and Sergeant-at-Arms in the suits against them by Joseph B. Stewart for alleged false imprisonment while in custody, under the order of the House, as a recusant witness in February, 1873, recently decided against Stewart by the supreme court of the District of Columbia, and the expenses of said defense be paid by the Clerk, from the contingent fund, upon the approval of Committee on Accounts."

Under resolution of August 9, 1876, to pay W. M. Merrick and W. H. Tuscott and Henry W. Garnett, counsel for defense in the case of Hallett Kilbourn *versus* Michael C. Kerr and others, two thousand two hundred and fifty dollars were appropriated, one-half of which only may be paid to them by the Clerk of the House of Representatives during the progress of the suit. (See 19 U. S. Statutes, 225, chap. 36.)

On March 3, 1877, the House passed the following:

"*Resolved*, That the Clerk of the House pay, and is hereby authorized and directed to pay, out of the contingent fund, to George C. Ellison, chief engineer of the House of Representatives, $100 to indemnify him for moneys expended by him and incurred by him in and about certain legal proceedings in defending the title and retaining the possession of certain property belonging to the national government in his custody as an officer of the House of Representatives. (See House Journal, second session, Forty-fourth Congress, page 287.)"

On 1st March, 1879, Senate passed the following:

"Whereas S. S. Blackford, in the proper discharge of his duties as captain of the Capitol police, while making an arrest in the Capitol on the 26th day of December, 1878, was seriously injured, having the top bone of his right arm, and only arm, fractured, and his arm otherwise disabled, so as to render him almost entirely helpless for a period of more than six weeks, and from the result of which injuries he may never recover; Therefore,

"*Resolved*, That the Secretary of the Senate be, and he is hereby authorized and directed to pay to the said S. S. Blackford, out of the contingent fund of the Senate, the sum of $500, to enable him to pay for medical and other expenses incurred on account of said injuries."

See Record of March 1, '79.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 31, 1881.—Read twice, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. CULBERSON introduced the following bill:

A BILL to provide for the adjustment of costs and expenses in certain judicial proceedings.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the sum of three thousand three hundred dollars be, and is hereby, appropriated for the payment on account of fees to this date to Frank H. Hurd, in the case of Hallet Kilbourn *versus* John G. Thompson, out of which the said Hurd shall pay all fees of associate counsel and expenses of printing and costs adjudged in Supreme Court in this case.

[House Report No. 153, 46th Congress, 3d session.]

FEBRUARY 4, 1881.—Referred to the Committee on Accounts and ordered to be printed.

Mr. CULBERSON, from the Committee on the Judiciary, submitted the following report (to accompany bill H. R. 7071):

*The Committee on the Judiciary, to whom was referred the bill (H. R. 7071) to provide for the adjustment of the costs and expenses in certain judicial proceedings, respectfully report:*

That Frank H. Hurd was regularly retained in the case of Hallet Kilbourn *vs.* John G. Thompson *et al.* by the Sergeant-at-Arms of the House, under a resolution passed March 3, 1877; that since that time Mr. Hurd has given the case attention, making the last argument in the case in the last term of the Supreme Court of the United States.

The committee find that the costs and expenses of printing and of attendance upon court from Ohio amounted to about $400, and that the sum of $800 ought to be paid the local assistant counsel in the case.

The committee therefore recommend that the sum of $3,300 be appropriated to Frank H. Hurd, from the contingent fund of the House, to pay the costs, expenses, and fees in the said case of Kilbourn *vs.* Thompson *et al.*

They further recommend that the bill be referred to the Committee on Accounts, and that the following resolution be adopted by the House:

*Resolved*, That the sum of $3,300 be, and the same is hereby, appropriated to pay Frank H. Hurd for all costs, expenses, and fees in the case of Hallet Kilbourn *vs.* John G. Thompson *et al.*

Such a principle has not only been frequently applied in other cases, but it is the only one consistent with the dignity, safety, and order of the House of Representatives, or of any legislative body; and it is proper to add that, owing to the delicate, highly responsible, and unremitting character of the duties of the chief engineer of the House of Representatives, that officer and his position appeal most strongly for the fullest and most effectual protection and support to the House, in every possible case where it is consistent with his duties, to accord him protection and support. It is but proper to state that no officer who ever held the position of chief engineer of the House ever obtained it under more honorable circumstances, or discharged its duties more satisfactorily and efficiently than Mr. Ellison, the claimant in this case, as was shown by the special investigation reported to Congress in House Report No. 841 of the first session of the Forty-fourth Congress, dated August 15, 1876. With this kind of an officer, and in the light of all the facts, we are clearly of the opinion that it is the duty of Congress to reimburse Mr. Ellison the amount of his necessary and proper costs and expenses incurred in his defense in the trials above referred to.

This case was reported favorably by the Committee on Claims of the Forty-sixth Congress, and the foregoing facts are substantially those embraced in the report of that committee. The accounts of the claimant, as presented to and reported by that committee, are appended to this report.

Your committee report adversely upon that portion of the petition claiming for salary, another person having actually performed the service and duties since his suspension.

Your committee have carefully examined all the vouchers in this case, and all of the items of the claimant's accounts in the defense of said trials, as embraced in the

report of the committee of the Forty-sixth Congress, and which are presented to your committee, and we deduct the following items in said accounts:

FIRST TRIAL.

| | |
|---|---|
| To expenses in jail (70 days) | $250 |
| To expenses of wife, sons, and daughters in coming to and returning from Washington, and boarding while here | 250 |
| To expenses telegraphing witnesses | 47 |
| To securing bail ($12,000) and indemnifying surety | 525 |
| Making in all a deduction of | 1,072 |

We deduct from said accounts the following items of the second trial:

SECOND TRIAL.

| | |
|---|---|
| J. Harry Thompson, M. D., expert, $500 (we deduct $250 of this item) | $250 |
| Wife, sons, and daughters' expenses to and from Washington, and board while here | 250 |
| Telegraphing witnesses | 38 |
| Making in all a deduction, on the second trial, of | 538 |
| The total deduction from said accounts being | 1,610 |

The remaining items in said accounts, amounting to $8,035.79, we think are correct, and the claimant has produced to your committee satisfactory vouchers therefor. We recommend that a bill appropriating to said Ellison the sum of $8,035.79 in full of his claim be reported by this committee, and we recommend the passage of the bill herewith reported.

*Vouchers and accounts of George C. Ellison.*

FIRST TRIAL.

WASHINGTON, D. C., *June*, 1879.

The following is a true itemized account of expenses incurred by George C. Ellison in defending himself while on trial for the alleged murder of David Small, in supreme court of the District. Case called May 2, 1877:

| | |
|---|---|
| To Col. William A. Cook, chief counsel in case, including services of three medical experts in case | $1,450 00 |
| To Joseph E. Hayden, associate in same case | 800 00 |
| To legal services in New York, H. B. Stanton | 100 00 |
| To legal services, Charles P. Shaw | 100 00 |
| To expenses in jail (70 days) | 250 00 |
| To expenses of wife, sons, and daughters in coming to and returning from Washington, and boarding while here | 250 00 |
| To expenses telegraphing witnesses | 47 00 |
| To M. A. Clancy, professional stenographer, making verbatim reports | 310 25 |
| To securing ($12,000) bail and indemnifying surety | 525 00 |
| Mileage, witnesses' fees, and board | 992 09 |
| First trial | 4,824 34 |

SECOND TRIAL.

WASHINGTON, D. C., *June*, 1879.

The following is a true itemized account of expenses incurred by George C. Ellison in defending himself while on trial the second time for the alleged murder of David Small. Case called June 20, 1878:

| | |
|---|---|
| To Col. W. A. Cook, chief counsel | $1,000 00 |
| To Hon. Stephen L. Mayham, counsel | 1,000 00 |
| John Swinburn, M. D., expert | 551 20 |
| J. Harry Thompson, M. D., expert | 500 00 |
| D. W. Bliss, M. D., expert | 250 00 |
| Robert Reyburn, M. D., expert | 250 00 |
| W. S. Wells | 250 00 |

| | |
|---|---|
| S. A. H. McKimm | $25 00 |
| Wife, sons, and daughters' expenses to and from Washington, and board while here | 250 00 |
| Telegraphing witnesses | 38 00 |
| Professional stenographer, taking testimony ($250 not claimed) | 00 00 |
| Julius Veidt, account making diagram of engine-rooms | 52 00 |
| To mileage and fees of witnesses, and expenses of same | 655 25 |
| Second trial | 4,821 45 |
| First trial | 4,824 34 |
| Total | 9,645 79 |

Upon this conclusion and recommendation of the House report your committee are not agreed. A portion of the committee think the present case is clearly distinguishable from the cases referred to in the House report as authorities or precedents in support of the bill; that the cases cited rest upon the principle that subordinate officers or agents of the government or of Congress are entitled to indemnity in executing the orders and directions of their superior, and that petitioner's case does not come within the operation of this principle. In their opinion petitioner's assault upon Small was in no sense made under the order or by the authority and direction of the House of Representatives; neither was it an act done in the defense or protection of the public property intrusted to his care and keeping. They consider, on the contrary, that he was engaged in a personal altercation—an altercation improperly and wrongfully brought on, as appears, by Small and under circumstances that justified petitioner in striking the blow which caused the death of the former and led to the trial the expenses of which the bill proposes to reimburse. Petitioner simply resisted a threatened *personal* attack, or defended himself against anticipated danger of bodily harm. The fact that the difficulty occurred while he was the engineer of the House, and at his post of duty, does not affect the transaction, or change its character from a *private* to an *official* act. Small was not interfering or attempting any interference with or control over the government property in charge of petitioner, who had an assistant present to look after and manage the engines and machinery, so that no increased risk or danger would have resulted to the House in the event of accident to petitioner. The government cannot undertake to indemnify its employés, or protect them against the consequences of their *private* quarrels and *personal* difficulties, although occurring while the officer or employé is on duty.

To establish such a precedent would be attended with most mischievous consequences.

For these reasons a part of your committee are opposed to the passage of the bill. Other members of the committee, while not dissenting from the foregoing views, are of the opinion that, inasmuch as petitioner was an officer of the House of Representatives—which appears, by its report, to have considered the safety of its members more or less involved and endangered by the act of Small in seeking a difficulty with its engineer in the engine room—the Senate, as a matter of comity, should concur in the conclusion of the House report upon the question.

Under these circumstances your committee have deemed it proper to report the bill back to the Senate without recommendation, which they accordingly do, and ask to be discharged from its further consideration.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 652.

# IN THE SENATE OF THE UNITED STATES.

MAY 25, 1882.—Ordered to be printed.

Mr. MCDILL, from the Committee on the District of Columbia, submitted the following

# REPORT:

[To accompany bill S. 1657.]

*The Committee on the District of Columbia, to whom was referred bill S. 1657, beg leave to report as follows:*

Daniel Donovan has been in the employ of the corporation of Washington and the District since A. D. 1868, and is now a clerk in the office of the auditor and comptroller; has had special training as a surveyor and accountant.

In 1877, one Samuel Strong began certain suits in court against the District for extra work performed and materials furnished, the claim amounting to $240,000.

By order of the Commissioners, Mr. Donovan was assigned as an expert assistant to the attorneys for the District in said suits, said order being made June 12, 1877. He was so employed until June, 1878, the cases having been referred to Eugene Carusi, special auditor, and was constantly employed reviewing, collating, and comparing books, plans, vouchers, diagrams, maps, and estimates.

June 3, 1878, the special auditor's report was set aside and a trial by jury ordered.

September 4, 1878, Donovan was again appointed to assist in the trial of the suits, and was reappointed August 22, 1879. At all times when assigned to such duty he was assured by the Commissioners and counsel that he would be liberally compensated for his services. He continued in service to the close of the trial of said suits, February 20, 1880. In that service he often worked from 9 a. m. till after midnight, and often Sundays. He also incurred small sums of expense in copying book accounts, visiting and measuring work in Georgetown and the city of Washington.

Mr. Carusi, special auditor, characterizes his services as "*invaluable and indispensable*," and says his labors extended beyond midnight for many consecutive nights.

Francis Miller, assistant attorney of the District, gives testimony to the same effect, as does also A. G. Riddle, esq., attorney of the District of Columbia, who says the proposed compensation is small pay. The Commissioners, in a letter of May 5, say the claim is just and reasonable.

For this service, extending from June 12, 1877, to June 3, 1878, and again from August 22, 1877, to February 20, 1880, the bill proposes to allow the sum of $1,200. His salary as clerk was and is $1,400.

Section 1764 Revised Statutes, prohibiting any allowance or comp
sation to officers unless expressly authorized by law, is a limitatoin u
accounting and disbursing officers, and was intended to deprive ther
any discretionary power with reference to payment of money or
allowance of accounts, but where a case is presented showing a j
and equitable claim for compensation it should be provided for by l
This is such a case, and the committee recommend its passage.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 653.

# IN THE SENATE OF THE UNITED STATES.

MAY 26, 1882.—Ordered to be printed.

Mr. VANCE, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 1651.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 1651) for the relief of Antoine J. Corbesier, having had the same under consideration, beg leave to submit the following report:*

The bill proposes to commission Antoine J. Corbesier, sword-master in the United States Navy, with the rank and pay of master, subject to the same rules and regulations, and entitled to the same rights and privileges as other persons in the Navy of said rank, but not to be in the line of promotion.

Your committee, having given this bill careful examination, are of the unanimous opinion—and it is also the opinion of the Secretary of the Navy—that the necessities of the service do not require that the person appointed to perform the special duties of sword-master at the Naval Academy should be commissioned as an officer of the Navy. The passage of this bill by Congress would create an additional grade in the service, and your committee do not deem it advisable at this time to make such a recommendation.

They therefore report the bill back adversely, and recommend its indefinite postponement.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 654.

# IN THE SENATE OF THE UNITED STATES.

MAY 26, 1882.—Ordered to be printed.

Mr. FRYE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 305.]

*The Committee on Claims, to whom was referred the bill (S. 305) for the relief of the heirs of Richard W. Meade, respectfully report:*

1. Richard W. Meade was a citizen of the United States, a merchant of Philadelphia, engaged in South American commerce, and in 1804 visited Spain in order to superintend great commercial transactions in which he was personally interested. For nearly ten years he was engaged in a very large and prosperous business, and during the war in which Spain was engaged he furnished large quantities of provisions and other supplies to that government.

In 1816, when the French had been expelled and the Spanish King restored to his throne, Mr. Meade fell under the displeasure of the Spanish Government, was arrested and imprisoned, his business ruined, his property destroyed or taken for public use, and great personal indignities put upon him. His friends made known the facts to John Quincy Adams, then Secretary of State, and upon his demand Mr. Meade was released.

Upon his return to America Mr. Meade applied to the United States to assist him in enforcing his claims against Spain. While negotiations were pending, about the year 1818, the Spanish Government offered to settle Mr. Meade's claims by conveying to him large tracts of land in the Floridas.

This offer of the Spanish Government was by Mr. Meade submitted to our Secretary of State, who informed him that such a cession would not be recognized, as our government was then negotiating with Spain for the Floridas.

The claims of Mr. Meade against the Spanish Government amounted in all to about $400,000, all of which were filed by him in the State Department on the 17th day of January, 1819. Other claims of American citizens against Spain were also filed, and out of these claims, including that of Mr. Meade, grew the negotiations which resulted in the treaty between the two governments, signed on the 22d of February, 1819.

Under this treaty, Florida was acquired by the United States, and the United States agreed to pay claims of citizens of the United States against the Spanish Government to the extent of $5,000,000.

The treaty, although signed on the 22d of February, 1819, was not ratified until the 24th day of October, 1820.

By the terms of this treaty, the United States renounced to Spain—

All claims of citizens of the United States upon the Spanish Government, statements of which, soliciting the interposition of the Government of the United States, had been presented to the Department of State, or to the minister of the United States in Spain, since the date of the convention of 1802, and until the signature of this treaty.

And by the eleventh article of the treaty it was specifically provided that all such claims should be considered as entirely canceled.

The claim of Mr. Meade originated after the year 1802, and prior to the signing of the treaty on the 22d of February, 1819; and he, prior to the signing of that treaty, filed his claim in the State Department, and had solicited the interposition of the Government of the United States in aid of its collection.

It was, therefore, by the express terms of the treaty above referred to, entirely canceled by the United States.

Owing to civil commotions in Spain, the treaty was not ratified by her within the time designated, and the United States in August, 1819, gave notice that this government would not be bound by said treaty.

In 1820, the constitutional government of Spain was restored, and Mr. Meade applied to the Spanish Government for a settlement of his claims. The King appointed a commission, or junta, to adjust and settle these claims. Before this tribunal Mr. Meade appeared, presented his books, receipts, and vouchers, and submitted his evidence.

In June, 1820, this commission, or junta, reported to the King their award, in which they found the amount due to be $373,879.88; and for this amount gave Mr. Meade a judicial certificate, and the award of this amount was confirmed by the King in council.

Subsequently, in July 1820, the Spanish Cortes considered the American treaty of February 22, 1819, and while said treaty was pending before that body, the question arose as to whether the claim of Mr. Meade was embraced within the provisions of the treaty. The Cortes appointed a committee who waited upon the American minister at Madrid, Mr. Forsythe, and informed him that if the claims of Mr. Meade were not included, the treaty would not be ratified. This committee was assured by our minister that the claims of Mr. Meade were regarded by the American Government as included, and would be paid by the American Government if the treaty should be ratified. Spain ratified the treaty, and the ratifications were duly exchanged between the contracting powers.

After the treaty had been ratified by the United States, but before its ratification by Spain, the United States notified Spain that the article in the treaty which provided that all grants of land made by Spain in the Floridas, after the 24th of January, 1818, should be declared null and void, had been agreed to on the part of the United States, and that the exchange of ratifications must be with this understanding.

When the Cortes resumed the consideration of the treaty, that body refused to annul the three private grants of land that had been made in the Floridas until the United States should agree to discharge the indebtedness of Spain to Mr. Meade, found by the award of the royal commission. Thereupon the United States, by their minister at Madrid, gave to Spain the assurance that the debt due to Richard W. Meade would be paid by the United States if the treaty were ratified by Spain and the grants of lands in Florida annulled. Upon the faith of this assurance, Spain annulled the grants and ratified the treaty whereby the Floridas, unincumbered, passed to the United States.

After the exchange of ratifications, Congress passed an act creating a commission to hear and determine claims against Spain, and to distribute the funds which the United States were to pay to such claimants.

Shortly after the organization of this commission Mr. Meade presented his claim, and filed the regularly certified copy of the award of the royal commission in Spain. This was held under consideration by

the commission until the winter of 1823, when it was decided that Mr. Meade must produce the original proofs upon which his claims against Spain were founded. These proofs were all in Spain, having been filed in the various departments of the government to which the several claims pertained after the award by the Spanish commission.

The treaty contained a provisión that the Spanish Government should, at the request of the United States, furnish all papers and vouchers in its possession necessary to substantiate the demands of the claimant.

Mr. Meade, immediately upon the announcement of the decision of the commission, preferred a request through the American Government upon Spain for such papers and vouchers. This was forwarded to Mr. Nelson, our minister at Madrid, but owing to the disturbed condition of Spain, and the disorganization of her departments, the proofs could not be obtained to be used before the commission. The commission therefore disallowed the claim and distributed the entire fund provided by the treaty to other claimants *pro rata*.

This was done upon the plea that the commission had authority only to pass upon unliquidated claims, and that the award in Mr. Meade's case having been made, his claim was a liquidated one and beyond the power of the commission to adjudicate.

Mr. Meade presented his claim to Congress, and bills for its payment have twice passed the Senate, and once the House of Representatives, but never both houses during the same session.

In 1863 the whole question was referred by Congress to the Court of Claims. That court, after a thorough examination of the case, held that the commission was a special judicial tribunal having exclusive jurisdiction, and that its judgment upon the subject-matter was conclusive; that Congress, upon referring the matter to the court, had not removed the bar of that judgment, and therefore the judgment, by a divided court, was against the claimant. All the judges, however, agree as to the justice of this claim.

In the decision in this case the Court of Claims used the following language:

> In rendering judgment adverse to the claimant, we yield obedience to authorities which we cannot disregard. We feel most keenly the hardships that have attended and surrounded the case. The fruits of a laborious and successful life of a meritorious citizen, who honored the name of American merchant abroad, have been appropriated by the United States nearly fifty years ago. To this hour, not a farthing's compensation has been made. He long since died, struggling to obtain from his country some recognition of his claim. His faithful wife pursued the same object for a quarter of a century longer, with that hope deferred which makes the heart sick, until the grave closed over her labors and his disappointments. It has descended to their family, now rendered illustrious by the great and patriotic services of one of their sons, rendered to the country in the hour of her peril. That we cannot now award them what their father was justly entitled to forty-five years ago, is to us a matter of sincere regret.

And Mr. Justice Nott, in his dissenting opinion, uses this language:

> For more than fifty years this claim has been pressed upon the attention of two governments. Its equity has never been denied. The American Government has urged its claim upon Spain, and the Spanish Government has alleged that its payment involved the honor of the United States; and each has admitted that it should be paid. It has received the commendation of the second Adams, of Monroe, Everett, Buchanan, and Clay. It has received the favorable reports of three committees in the Senate, and of ten committees in the House; and a bill providing for its payment has twice passed the former and once passed the latter, but never so as to become an act of the same Congress. It also has been once tried by this court, and divided the judges, who have given conflicting opinions of unusual learning, ability, and research. Finally, the debt was due to an eminent merchant who always received from the two governments of America and Spain distinguished and perhaps unequalled consider-

ation, and whose name is now honorably stamped, by illustrious public services, u the greatest successes of our national arms. With all these great advantages, while a thousand unworthy claims have been successfully carried through Congr this one remains unsettled to-day, as when it was first presented to the governm in 1808, having well nigh worn out two generations in the weary pursuit of ta and uncertain justice. Whether that justice can be awarded by a court of law, is important question which I now with reluctance proceed to examine.

The case was appealed to the Supreme Court, and is reported in Wallace, p. 725.

Upon the question as to whether the claims of Mr. Meade came clea within the provisions of the treaty, the Supreme Court held:

Beyond question they were at that date unliquidated claims of a citizen of the Uni States; statements of which, soliciting the interposition of our government, had only been presented to the Department of State, but also to the minister of the Uni States, showing to a demonstration that the claims of the ancestors of the appell were within the very words of the treaty.

The commission held that they were not unliquidated, and upon t point, and this point only, decided against Mr. Meade.

The Supreme Court, however, upheld the Court of Claims upon t point that Congress had failed to remove the bar created by the decisi of the commission.

From the time the United States Government assumed the payme of this claim upon the award of the Royal Commission of Spain, it h been continuously pressed upon Congress for settlement:

First, by Richard W. Meade himself, until his death; then by h widow, until her death; then by his son, Richard W. Meade, until h death; and now by Margaret G. Meade, his daughter, for the benefit all the heirs.

In the Forty-sixth Congress, this claim was referred to the Committ on Claims of the House, and a unanimous report was made in favor the claimants, in which the whole subject was most elaborately viewed.

Your committee is therefore of opinion:

1. That the Spanish Government was honestly indebted to Richa W. Meade in the sum of $373,879.88.

2. That by the terms of the treaty between the United States a Spain, this government became liable to pay this amount.

3. That the Spanish Cortes refused to ratify the treaty until assur by the American minister that the award in favor of Richard W. Mea would be paid by the United States.

4. That the Spanish Government was willing to pay said claim granting to the claimant large tracts of land in the Floridas.

5. That the claimant was prevented from accepting such grants the declaration of our Secretary of State that this government wou consider such grants null and void.

6. That the agreement by the United States to fully pay and satis this claim was a part of the consideration for the cession of the Florid

Of the justice of the original award there is no doubt, and that pa ment has been most unjustly delayed is equally clear.

Taking into consideration all the circumstances of the case, the n ture of the claim, the stipulations of the treaty, the promises made our highest officials, the fact that the commissioners should have co sidered Mr. Meade's claim; that their decision that said claim was liq dated and not within their jurisdiction has not been sustained by t Supreme Court of the United States; that they should at the time ha allowed his whole claim as determined by the Spanish junta, yo committee are of the opinion that provision should be made for t

payment of the same percentage, to wit, 92 per cent. of the amount of his said award, that being the percentage allowed by said commission and paid by the United States to the other claimants, whose claims were proven before said commission. While recognizing the force of the arguments for allowing interest on said claim, your committee, under the rules which prevail in Congress, are obliged to report adversely as to that item.

Your committee report back the accompanying bill, amended as follows: Striking out in the sixth line all after the word "of," down to and including the word "twenty," in the ninth line, and inserting instead thereof the words, "three hundred forty-three thousand nine hundred and sixty-nine dollars and forty-eight cents," and, as amended, recommend its passage.

47TH CONGRESS, 1st Session. } SENATE. { REPORT 654, Part 2.

IN THE SENATE OF THE UNITED STATES.

JUNE 23, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill S. 305.]

Our examination into this case has led us to conclusions directly the reverse of those reached by the majority, both as to the law and the facts.

It is our duty, therefore, to present the merits of this claim as we understand them after a somewhat laborious investigation. This will be best done by a history of the case from its origin to the present time.

In the year 1803 Richard W. Meade, a citizen of the United States, went to Spain, and soon after his arrival in that country engaged in commercial transactions to large amounts. In the course of his business he made many contracts with the Government of Spain, selling and lending provisions and supplies for its army. The Spanish Government was engaged in a desperate war with Napoleon, with its resources greatly strained, its finances much disordered, its credit low, and cash demands on its treasury generally unsatisfied.

In the course of these transactions large claims accrued to Meade for unpaid balances on contracts, and these claims were greatly augmented by damages for non-compliance—for interest and damages on protested bills of exchange.

Meade continually and persistently pressed for a settlement and payment of his claims; but, owing to the distressed financial condition of Spain and the disordered state of affairs then prevailing, his efforts were fruitless.

About the year 1815, whilst these transactions between Spain and Meade were in progress, Meade was appointed by a Spanish court receiver or curator of the estate, situated in Spain, of one Glass, who had been declared a bankrupt in England. On a settlement of his accounts it was ascertained that the sum of $52,000 in specie was in his hands. This was left in his custody under a bond which he had given to account for it to the court from which he had received his appointment. Soon afterwards a claimant, a British subject, appeared for this fund, who commenced judicial proceedings to recover it. The claimant being unable to give proper security for the return of the money in case his claim was not sustained, the court ordered Meade to deposit it in the Spanish treasury. Meade, having in his possession treasury warrants which, owing to the insolvency of the treasury, could not be paid, induced the treasurer to receive them instead of specie, taking a receipt, however, in which the treasurer agreed to account for the amount in specie. This agreement, he claimed, made the deposit *effective* specie. It was not, however, *effective* to produce the specie on demand, which,

being well known to the court and the British minister, the former, at the instance of the latter, in due course of judicial proceedings in the cause, adjudged that no legal and proper deposit had been made, and ordered Meade to make a new deposit in specie. Meade refused to do this. He was arrested and detained in prison for two years. This imprisonment, as it originated in the illegal deposit made by Meade, for aught that appears, might have been terminated at any time by his making the deposit in specie. It is certain that the treasury was bankrupt, and was unable to respond to the receipt of the treasurer by payment in specie, and it is also certain that the imprisonment was prolonged by the same inability.

The King seems to have been pressed on both sides, by the British minister and the claimant demanding the money, and by the claim of Meade that he had the royal treasurer's receipt agreeing to pay in specie, for which the honor of the crown was pledged, and hence the evasions and delays in acting on Meade's application for a release. The King felt the disgrace of prolonging the imprisonment for a failure to deposit money, when his treasurer had received warrants on the treasury which were payable on demand; and yet he hesitated to order a release, which would give the claimant a right to demand money, which he was unable to pay. His imprisonment was, however, finally decided by the King to have been illegal. The exact nature of this imprisonment does not appear. He was imprisoned in the Castle of St. Catalina, yet it is sometimes said he was confined in a dungeon; sometimes it is said to have been in a felon's cell. But Mrs. Meade, in her memorial to the President, dated 4th December, 1817, near the end of his imprisonment, in describing it, only complains "that he was locked up at night for several months." (See 4 Am. St. Papers, 150–1.) For this imprisonment, in the liquidation hereinafter mentioned, he was allowed damages to the amount of $75,000.

Immediately on his release, about 7th May, 1818, Meade renewed his efforts for a settlement and liquidation of his various claims on the Government of Spain, including among them a demand for $100,000 for his imprisonment.

Negotiations were then pending between Spain and the United States for a cession of the Floridas to the latter, the defining the boundaries between the United States and the Spanish Provinces in North America to the south and west, and for the settlement and payment of various claims preferred by the United States for damages suffered by their citizens from illegal captures and seizures; and embracing also certain claims by Spain in favor of Spanish subjects. On the 24th January, 1818, more than three months prior to Meade's release, Spain had formally proposed to the United States to make a cession of East and West Florida. This date, as will be hereafter seen, is important to be kept in mind; and it will also be well to remember that from the outset of the negotiations the price to be paid by the United States to Spain for the Floridas was the fund to which both parties looked for the payment of the claims of American citizens.

Meade's release from imprisonment was procured by the active interposition of the United States; and their minister at Madrid seems to have seconded the efforts of Meade to secure a liquidation of his claims.

In a month after Meade's release from imprisonment, to wit, on 6th June, 1818, he addressed a letter to Mr. Adams, Secretary of State, in which he stated that the Government of Spain was indebted to him in a considerable amount; that for the last five years he had been making the most enormous sacrifices to procure payment for property which he

had entrusted to their hands; that from the date of his arrest (2d May, 1816) every species of payment had been suspended; that the object of the government was to exterminate a creditor whose claims were too just to be denied; that his resistance, the justice of his demands, the protecting hand of his (my) government had disappointed the expectations of those who had planned his ruin; that he feels, however, sensible that to the want of inclination is to be added the want of means of satisfying his claims; that he fears a delay which, in the present state of the political relations between Spain and the United States, may prove fatal to him. He then proceeds to state:

That it had been *insinuated* to him that, if he would advance a *further sum in cash*, a cession of lands might be procured in either of the Floridas to cover the probable amount of the advance and his (my) claims; that no specific proposal has been made to him, nor had he dared even to listen to any till he should receive the approbation of the President, as he had been led to suppose that the Government of the United States have required or said that no cession of lands would be recognized after a certain date, should they acquire the Floridas; yet as the object of the demand on these provinces and their cession to the United States, if it should take place, is designedly and expressly for the purpose of remunerating the citizens of the United States for injuries sustained, or damages claimed by them from Spain, he concludes no objection could occur to the arrangement proposed. He has, however, abstained from making or receiving any formal proposal till he should receive a specific decision from the President.

He continues—

Should I be fortunate enough to make an arrangement of the kind, I shall always be willing, if the Government of the United States think proper to assume the grant made to me, to give it up to them for a sum equal or equivalent to my demands on this (Spanish) Government.

He then states that he will wait in Madrid for an answer:

And should it be unsatisfactory, or should I find it impracticable even to obtain this mode of arrangement from the Spanish Government, in case of your answer being satisfactory, I shall enter my protest and leave the kingdom, and *place a full reliance on my government for supporting my just demands, whenever an arrangement shall take place between the two countries, being confident* that whenever such an event does take place provision will be made for the claims of our citizens (4 Am. St. Papers, 720).

The President indorsed on this letter that the injuries of Mr. Meade had been deeply felt by the government—

But *no particular arrangement can be* made for the payment of his claims, by Spain, in the lands in the Floridas that can be countenanced or admitted by the executive. His claim, with those of every other citizen, will be carefully attended to and provided for so far as the government may be able &c. (4 Am. St. Papers, 721).

Mr. Adams, on September 18, 1818, wrote a letter to Meade, in which he informed him, that his letter of June 6 had been submitted to the President, and that by his direction he would state that, in the negotiations pending between the United States and Spain, it is the intention of the President that provision shall be made for the eventual adjustment and satisfaction of the just claims of many citizens of the United States, among which every attention which may be proper will be shown to yours; that it has been contemplated that means might be found by the cession of the Floridas for this satisfaction, in a manner which may not be burdensome to Spain; *which expectation* would be disappointed if the property of all the vacant lands in the province should be granted by the King of Spain to individuals before the cession of the jurisdiction to the United States; and it is expected therefore that, in case of the conclusion of a treaty including this cession, all grants after a certain date, to be agreed on, will be annulled. "It is not in my power to say what that will be, nor to give you any hope of an early and favorable conclusion of the negotiation" (4 Am. St. Papers, 721).

Mr. Meade seems to have acquiesced in the manifest propriety of t course; so he made no further efforts to get satisfaction in lands, whi if he had, would have ended in failure, since his first efforts in this rection were three months subsequent to the date fixed in the treaty after which all grants were annulled.

He now turned his attention to getting satisfaction through the treat in common with other American citizens. He seems also to have ke up with the progress of the negotiations, and to have known in advan the provisions of the fifth renunciation in the ninth article of the treat which required a presentation of the claims of any citizen to the Unite States, or to their minister in Madrid, prior to the signature of th treaty, in order to bring them within the protection afforded by it. (Se 8 U. S. Stat. at Large, p. 258.)

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Whilst it was in this condition, and the United States were about to ap. after so long a time, the fruits of the treaty in the settlement of l pending disputes with Spain, Mr. Meade, on February 8, 1821, ad- ressed an elaborate memorial to the President. (See 4. Am. St. Pa- ers. 704.) In this he protests against the power of the United States compromise or release his claim against Spain, but states his willing- ss to accept the United States as his debtor in lieu of Spain if the bligation to pay be coextensive with that of Spain. He relies on the quidation of his claims by Spain, and protests against being compelled, provided in the eleventh article of the treaty, to exchange "an as- rtained debt with a consummate obligation for a mere outstanding aim, open to fresh and reiterated contestation from unknown parties nd mere intermeddling stangers, without privity or interest in the iginal contract or any motive for engaging in the controversy, but an ger emulation for the apportionment of a very inadequate sum set art for the satisfaction of all claims."

He complains that it is to be re-examined and adjudicated over again by new commission, which will not be closed for three years, and which, it decides, as it may, to investigate anew the merits and details of his

claim, will have to invoke documentary evidence from a foreign country peculiarly tenacious of its archives. He objects to being compelled to wait for three years for a contingent *quota* or dividend out of a gross sum set apart for the entire mass of claims. He insisted that his claim had been substantially and distinctly provided for in the negotiations, and that it should be paid in full out of the appropriations to be made for carrying the treaty into effect. He claimed, also, that his property had been used in the purchase of the Floridas. He asked that a rider be attached to the treaty, distinctly recognizing his claim; and if that cannot be done, that the treaty be amended, so as distinctly to exclude it from its operation, so that he might be left free to prosecute his claim against Spain "unembarrassed by the imposing renunciation of his country," preferring "to abide the issue of an appeal to the moral sense and good faith of that nation, rather than the chance of that contingent and long-deferred indemnity for the other claims in whose company mine (his) had been introduced by the treaty."

This memorial was submitted by the President to Mr. Adams, who, in reply, among other things, stated:

> With regard to the material facts alleged by Mr. Meade in support of his claim to a distinct and separate engagement involved in the treaty on the part of the United States to pay the whole of his liquidated demand upon Spain, he has been misinformed. Neither his nor any other individual claim was ever mentioned between the negotiators of the treaty. * * * It was known that Mr. Meade had a large, unliquidated demand, * * * and he had been informed, *according to his request*, that it would be considered by the Government of the United States, in common with others, at the negotiation of the treaty; but of the amount or validity of the claim this government had no knowledge sufficient to warrant any special engagement to assume it had such a proposal been made; and, by his own statement, it was not liquidated until nearly a year after the signature of the treaty, and then without the *privity* of this government, and not in the manner prescribed by the treaty for all claims provided for by it.

Mr. Adams further stated that Mr. Meade's argument, drawn from the law of nations, is founded upon a statement of facts, the most essential of which are unfounded. He admits that the government unasked cannot interfere to settle contracts between its citizens and other states; but insists, if the claimant appeals (as Meade did) to his government for adventitious aid, he voluntarily makes his claim a subject of negotiation and of those compromises in which all national adjustments of individual claims must, and do always, consist.

> No special provision for the individual claim of Mr. Meade, no express renunciation of it, was ever made or contemplated by the treaty, nor was any mention made to me of it by General Vives in delivering to me the ratification of his sovereign. (4 Am. St. Papers, 704.)

The memorial was delivered to the Senate before they acted on the treaty, and they ratified it without assenting to the claims of Mr. Meade.

Notwithstanding this distinct repudiation by the Executive and the Senate of Mr. Meade's pretensions, now again set up and recognized by the majority of the committee, he, at the same session of Congress at which the treaty was ratified, reiterated them in a memorial to Congress, demanding again a separate substantive provision for the payment of his claim in full. (See 3 Court of Claims Reports, p. 226.)

On the 14th May, 1821 (see *Ib.*), he applied to Spain for payment, or for direction to the source from which payment could be obtained, and was, on 16th June, officially advised by the Spanish minister that his claim was embraced in the ninth article of the treaty, a position never disputed by the United States Government, and fully recognized by the commissioners appointed under the eleventh article of that instrument, and which, if Meade had acquiesced in, would have saved him from the

ow sought to be indemnified, which is distinctly and clearly
itable, as will be hereinafter shown, to his failure to do so and to
ting up pretensions for full payment outside of the treaty, re-
at the time both by Spain and his own government, and recently
Supreme Court of the United States.

he eleventh article of the treaty (see U. S. Stat. at L., 260) pro-
was made for the appointment of three commissioners, by and
ie advice of the Senate, to adjudicate the claims of American
, from which Spain had been exonerated by the ninth article.
ere to meet in the city of Washington, and, within the space of
ears from the time of their first meeting, they were "to receive,
e, and decide upon the amount and validity of all claims" pro-
or in the treaty (among which, as we have seen, was Meade's).
ere "authorized to hear and examine, on oath, every question
to said claims, and receive all suitable, authentic testimony
ing the same"; and the Spanish Government was "to furnish all
cuments and elucidations as may be in their possession for the
ent of said claims according to the principles of justice, the
nations, &c., the said documents to be specified when demanded
commissioners." As before noticed, the claims were all those of
"statements soliciting the interposition of the Government of
ited States have been presented to the Department of State, or
minister of the United States in Spain, since the date of the
tion of 1802, and until the signature of this treaty," and the
States undertook "to make satisfaction for the same to an
not exceeding $5,000,000."

e commissioners met and organized on the 7th of June, 1821, and
owers expired on June 7, 1824.

Meade did not present his claim to them till January 6, 1822,
nonths after their first meeting. In his memorial to them he
l that Spain was still liable to him, denying the power of the
States to release his claim without full payment; and he also
l that the United States were bound to make full payment, and
ed that his application to one government should be construed
ease of the other. He presented his claim solely in its liquidated
nd claimed full payment in preference to all other claimants.
morial concluded with two prayers:

hat the commission would determine whether his claim was in-
in the renunciations of the ninth article of the treaty.

hether, if so comprehended, he was not "entitled to a substantive
l satisfaction of his claims, whatever may be the pro rata allow-
the general mass of claimants out of the specific fund provided
treaty."

commissioners were in doubt at first whether Meade's claim (pre-
as it was solely in its liquidated form) was included in the treaty.
espondence ensued between them and Mr. Adams on that subject,
h the latter, on March 9, 1822, stated that it was the opinion of
ecutive department that it was included, but that the amount
lidity of that and all other claims must be determined by the
sion—that it was their peculiar province to determine on the
of the claims, and that the executive department did not have
er had the means of so determining. He also stated explicitly
l the claims should have the same benefit of the provisions of
ty—

"subjected to the same investigation, and be decided upon, not by any sub-
transaction between the claimant and the Spanish Government, but by the

commissioners in the manner prescribed by the treaty and upon such proof as th should require for ascertaining their amount and validity; and that this was ful understood as the final judgment of the negotiators. (See 3 Ct. Claims R., 340.)

On April 4, 1822 (about a month after the date of this letter), Mead addressed a letter to Mr. Anduaga, the Spanish minister at Washing ton, sending a copy of this correspondence between the commissioner and Mr. Adams, and stating that "his principal motive" for writing wa to apprise the Spanish Government of the view which the Americar Secretary of State seemed disposed to take of the liquidation of hi claim.

Notwithstanding it was made in the most formal manner by the commissioners o Spain, at the express solicitation of the American minister at Madrid, and was consum mated before the effectual ratification by either Spain or the United States.

He then proceeds to throw doubt upon the truth of the statement in Mr. Adams's letter, that it was—

The full understanding of the contracting parties that all the claims, including o course his (my) own, should be decided by the commissioners upon such proof as they should think proper, and that such a transaction as the liquidation of his (my) clain is to be of no effect whatever.

And suggests, if such be the fact, it must be known to the minister or the Spanish Government. He then asks the interposition of the min ister to secure the vouchers, and concludes by saying he is not without hope, notwithstanding the expression of a contrary opinion by one of the commissioners, that the commissioners will not reject the liquidation which course he regarded as "contrary to the fundamental rules of evi dence, and more especially the comity of nations." (3 Ct. of Claims R. 342.)

On the 27th June, 1822, the commissioners decided that the liquida tion was not sufficient evidence, and that a production of the proofs of the amount and validity of the claim was necessary, of which forma notice was given to Mr. Meade. No reply having been sent by the Spanish minister to Meade's letter of April 4, he, on 10th October, 1822 four months after the decision of the commissioners just noticed, ad dressed another letter to Mr. Anduaga, in which he informed the min ister of that decision, stating that, "though still not without hope, that further reflection will satisfy the commissioners how utterly inconsist ent such a course of proceeding would be with the soundest rules of evidence and the comity of friendly nations," he desired to prepare for the worst, and he again made application for the vouchers.

On October 16, 1822, Mr. Anduaga replied to both letters, and being thus invited by Mr. Meade to criticise and condemn the position of Mr. Adams and the decision of the commissioners, who, by the joint consent and solemn contract of Spain and the United States, as expressed in the treaty, were made the absolute judges of the evidence on which they would proceed, he did so in no stinted measure. He expresses his sur prise at the decision of the commissioners, and flatters himself that they will not persist therein when they reflect on the injustice it involves and the libel it imports on his government; defends the high character of the tribunal making the liquidation, and relieves it from the charge of collusion by stating that when the liquidation was made it by no means appeared that the United States would assume to pay the debt He further says it was made at the instigation of the American minister and when it was communicated to the Government of the United States they expressed their gratification at the result; and finally he denounces the decision of the commission as a serious insult to his government and bases a refusal to furnish the vouchers on what the King deems due

to the dignity of the crown, the reputation of its ministers, and the integrity of its tribunals, all of which would be imperiled if the King were "to consent that a foreign commission should deem itself authorized to reverse their decrees."

Being fortified by this refusal of the Spanish minister, resulting, if not secured by this personal and private correspondence with him, a mode of application for the vouchers not authorized by the treaty, as he himself confesses in the extract given below, Mr. Meade again memorialized the commissioners for an allowance of his claim in its liquidated form. He called their attention to this refusal, stating his earnest efforts, and his failure to get the vouchers; protests against the decision they had made, reiterated the arguments against it contained in Mr. Anduaga's letter, and manifestly relied on it to secure a reversal of the decision. He claimed, however, that he had evinced his disposition to throw every light on the subject which could be desired, and concluded by expressing his confident hope that the liquidation would not be regarded as wholly null and void, but in the event it should, acknowledging

*That a resort must be had to the eleventh article of the treaty, which points out the course to be pursued in all similar cases, a course mutually agreed upon by the United States and Spain, which the commissioners alone are competent to take; "and the only one from which a satisfactory result can be reasonably expected."* (See 3 Ct. Cl. R., 345.)

This course was for the United States to make a demand for the vouchers on the call and specification of the commissioners.

We can ascertain no date for this memorial, and Mr. Everett, in his report (3 Ct. Cl. R., p. 321), expresses the same inability. Presumably, however, it was presented a very short time before the decree of the commissioners confirming their former decision, and making the demand for the vouchers as requested, which was in April, 1823, and prior to the 18th day of that month. This presumption is justified by the fact that no complaint has been made of any delay in the action of the commissioners, and there seems to have been no occasion for the consumption of time in reiterating a judgment which had already been pronounced, in plain accordance with the provisions of the treaty, and with the construction put on it by our government and Spain. It may safely be assumed, therefore, that Mr. Meade made no requisition on the commission to demand these papers until nearly two of the three years in which the commission could act had expired.

On the 18th April, 1823, the commissioners communicated to Mr. Adams their demand for the vouchers, accompanied by the necessary specifications of them furnished by Mr. Meade. Three days *prior* to the sending of this list by the commissioners to Mr. Adams, it is a remarkable fact that Mr. de Rivas y Salmon, the successor of Mr. Anduaga, before any demand was made by our government on Spain, having information of the decision from some source, and being moved by an influence not disclosed in the records, certainly not by his own government, as will be hereinafter seen, presented what Mr. Everett in his report denominates

A vigorous remonstrance in a formal protest to the Secretary of State (Mr. Adams), confirming Mr. Anduaga's letter of the 16th of October preceding, and stating that the rejection of the certificate of liquidation was a slight upon the most respectable authorities and upon the King of Spain himself. (See 3 Ct. Cl. R., 331.)

We quote further from Mr. Everett's report to show the fate of the application:

The documents required by Mr. Meade were demanded by the American Government through Mr. Nelson, the American minister, then about to sail for Spain. Mr. Nelson,

on arriving at Cadiz, found it blockaded by a French squadron and was unable to enter it. After the surrender of Cadiz he returned to that port and thence proceeded to Madrid, arriving there a few months only before the commission at Washington closed their sessions. Mr. Nelson addressed himself to the Spanish Government for the documents required, and the Spanish Government *professed its perfect willingness to furnish* them. In consequence, however, of the great quantity of the documents and of the confusion into which the public offices had been thrown by the removal of the government to Seville and Cadiz, Mr. Nelson was given to understand that some delay would attend their being furnished. A few days before the expiration of the commission under the Florida treaty intelligence to the foregoing effect was received from Spain, and on the 29th of May, 1824 (ten days before the close of the commission), Mr. Meade's claim was rejected for want of sufficient evidence to establish its validity. (See 3 C. Cls. R. 321.)

The date of Mr. Adams's letter to the Spanish secretary, making the demand, was 13th May, 1824, and the date of Mr. Nelson's application to the Spanish minister for the vouchers was in the following December, a few days after his arrival at Madrid.

Up to this point there is no fault attributable to the United States in making the demand, for it could only be made on a list of the papers furnished by Mr. Meade, and there is no fault on the part of Spain, for the correspondence between Mr. Meade and Mr. Anduaga was wholly personal, was unauthorized by the treaty, and, so far as appears, was not communicated to the Spanish Government, and was of a character that if it had been, that government was not bound to notice it. It will be noted also that though the two Spanish ministers at Washington assumed to treat the demand for the vouchers as a serious insult to the dignity of the Crown and an imputation upon its honor and the fairness of its tribunals, that no such sentiments were entertained by the Spanish Government itself, which, as soon as the demand was communicated, expressed, in the most obliging and polite terms, its entire willingness to comply with it. That this expression was sincere, and that Spain in good faith endeavored to furnish the vouchers in time, is abundantly shown. Mr. Meade himself, in his memorial to Congress dated January 6, 1825, bears this testimony:

> No reluctance whatever has been manifested by the Spanish authorities to comply with these calls for the papers, which, in fact, have been attended to with as much alacrity and expedition as are at all consistent with the habits of business or perhaps practicable in the existing state of affairs. The delay has been produced solely by imperious circumstances beyond any human control, and by the *lateness of the hour at which the application has been made*, itself the effect of the same imperious circumstances. (4 Am. St. Papers, 716.)

At the next session of Congress after the expiration of the commission, to wit, in January, 1825, Mr. Meade presented an elaborate memorial to that body, asking redress by a payment in full of his claim. This was his original position, and though utterly unfounded, and frequently rejected by all the departments of this government, and finally held to be "wholly inadmissible" by the Supreme Court of the United States, he pursued it from the date of his remonstrance, 8th February, 1821, against the ratification of the treaty by the Senate, till the end of his life—an error which caused the loss of the allowance of his claim under the treaty, and that damage for which redress is now and has for years been sought at the hands of Congress. In this memorial he again insists on the conclusiveness of his liquidation, presenting with great elaboration and ability all his previous arguments, and insisting, as a new ground of indemnity (as we understand it), that if he originally gave authority to the United States to treat with reference to his claim, it was clearly revoked by the failure of Spain to ratify the treaty within the time prescribed in it, and that it was not continued by its reintegration afterwards. (See 4 Am. St. Papers, 709–718.)

At the first session of Nineteenth Congress (anno 1826) Mr. Forsyth, from the Committee on Foreign Affairs of the House of Representatives, reported a bill for the relief of Mr. Meade and *all others whose claims had been lost*, by a failure of proof, from the archives of Spain. The report considered the decision of the commissioners as conclusive, and that the whole subject of claims of citizens of United States on Spain prior to 1818 should be deemed settled; that the commissioners deemed the claim of Meade as embraced in the treaty; that at his instance a demand was made on Spain for the evidence necessary to a fair examination of it; that this demand was not, owing to unforeseen circumstanstances, made until shortly before the expiration of the commission, "although application for the vouchers by Meade had been made to the United States fourteen months prior thereto." The report states that Meade should not suffer by the delay to furnish evidence in the hands of Spain; that we had demanded the vouchers and Spain was bound to furnish them. The committee reported a bill to give him the means of establishing his claim *in the same manner as if the commission still existed*. (See 3 Ct. Cl. R., 317.)

On January 14, 1838, Mr. Archer, from same committee, reported a bill in accordance with the above views, establishing a board to decide on Meade's claim, who were to proceed in the *same manner that the commissioners* did, on the original evidence, disregarding the liquidation. (3 Ct. Cl. R., 318.)

On 8th January, 1828, Mr. Everett, from same committee, made an elaborate report on this claim, reviewing all the facts, and concluding, as the basis of granting relief, that *it was Spain's fault that the vouchers were not furnished, and that the United States were bound under the treaty to see that Spain complied with her stipulations to furnish them.*

The committee base their judgment as to the default of Spain on the letter of the Spanish minister (Mr. Anduaga) to Mr. Meade, in October, 182–, declining to furnish the papers on his demand, and insisted that under the treaty Spain was bound to supply the papers when demanded in that way, as the provision that they were to be *specified when demanded at the instance of the commissioners* did not preclude their being demanded in any other way; that the demand made by Meade was in sufficient time.

The committee, in answer to Meade's request that the claim should *be submitted to the Supreme Court of the United States*, decline to recommend it on the ground that it would be a novel experiment of doubtful expediency, and that—

> As a more serious objection, it would be submitting the claim to a tribunal totally *different from the one* to which *all* other claimants under the treaty were referred, and they report a bill to place Meade's claim as nearly as possible on a footing with the others.

Meade died in 182–, but his claim has been constantly urged since by his legal representatives.

In 1855 Meade's administrator sued the United States in the Court of Claims on this demand. In 1859 the court decided adversely to him, and on 26th February, 1861, the Senate referred the same back to the court for a rehearing. In December, 1866, the court again decided adversely to the claim. An appeal was taken to the Supreme Court, which in 1869 affirmed the judgment in an opinion which swept away the main grounds upon which the claim was prosecuted. (See Meade *v.* U. S.. 9 Wall., 709.)

We have given at length the history of this case, proceeding with some minuteness as to details. Most of the questions involved in it have been

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ill wanted the second ratification by the Senate, as the first had e void by the non-action of Spain.

lst it was in this condition, and the United States were about to fter so long a time, the fruits of the treaty in the settlement of nding disputes with Spain, Mr. Meade, on February 8, 1821, ad- l an elaborate memorial to the President. (See 4. Am. St. Pa- 04.) In this he protests against the power of the United States promise or release his claim against Spain, but states his willing- accept the United States as his debtor in lieu of Spain if the tion to pay be coextensive with that of Spain. He relies on the

claim, will have to invoke documentary evidence from a foreign country peculiarly tenacious of its archives. He objects to being compelled to wait for three years for a contingent *quota* or dividend out of a gross sum set apart for the entire mass of claims. He insisted that his claim had been substantially and distinctly provided for in the negotiations, and that it should be paid in full out of the appropriations to be made for carrying the treaty into effect. He claimed, also, that his property had been used in the purchase of the Floridas. He asked that a rider be attached to the treaty, distinctly recognizing his claim; and if that cannot be done, that the treaty be amended, so as distinctly to exclude it from its operation, so that he might be left free to prosecute his claim against Spain "unembarrassed by the imposing renunciation of his country," preferring "to abide the issue of an appeal to the moral sense and good faith of that nation, rather than the chance of that contingent and long-deferred indemnity for the other claims in whose company mine (his) had been introduced by the treaty."

This memorial was submitted by the President to Mr. Adams, who, in reply, among other things, stated:

With regard to the material facts alleged by Mr. Meade in support of his claim to a distinct and separate engagement involved in the treaty on the part of the United States to pay the whole of his liquidated demand upon Spain, he has been misinformed. Neither his nor any other individual claim was ever mentioned between the negotiators of the treaty. * * * It was known that Mr. Meade had a large, unliquidated demand, * * * and he had been informed, *according to his request*, that it would be considered by the Government of the United States, in common with others, at the negotiation of the treaty; but of the amount or validity of the claim this government had no knowledge sufficient to warrant any special engagement to assume it had such a proposal been made; and, by his own statement, it was not liquidated until nearly a year after the signature of the treaty, and then without the *privity* of this government, and not in the manner prescribed by the treaty for all claims provided for by it.

Mr. Adams further stated that Mr. Meade's argument, drawn from the law of nations, is founded upon a statement of facts, the most essential of which are unfounded. He admits that the government unasked cannot interfere to settle contracts between its citizens and other states; but insists, if the claimant appeals (as Meade did) to his government for adventitious aid, he voluntarily makes his claim a subject of negotiation and of those compromises in which all national adjustments of individual claims must, and do always, consist.

No special provision for the individual claim of Mr. Meade, no express renunciation of it, was ever made or contemplated by the treaty, nor was any mention made to me of it by General Vives in delivering to me the ratification of his sovereign. (4 Am. St. Papers, 704.)

The memorial was delivered to the Senate before they acted on the treaty, and they ratified it without assenting to the claims of Mr. Meade.

Notwithstanding this distinct repudiation by the Executive and the Senate of Mr. Meade's pretensions, now again set up and recognized by the majority of the committee, he, at the same session of Congress at which the treaty was ratified, reiterated them in a memorial to Congress, demanding again a separate substantive provision for the payment of his claim in full. (See 3 Court of Claims Reports, p. 226.)

On the 14th May, 1821 (see *Ib.*), he applied to Spain for payment, or for direction to the source from which payment could be obtained, and was, on 16th June, officially advised by the Spanish minister that his claim was embraced in the ninth article of the treaty, a position never disputed by the United States Government, and fully recognized by the commissioners appointed under the eleventh article of that instrument, and which, if Meade had acquiesced in, would have saved him from the

loss now sought to be indemnified, which is distinctly and clearly attributable, as will be hereinafter shown, to his failure to do so and to his setting up pretensions for full payment outside of the treaty, rejected at the time both by Spain and his own government, and recently by the Supreme Court of the United States.

By the eleventh article of the treaty (see U. S. Stat. at L., 260) provision was made for the appointment of three commissioners, by and with the advice of the Senate, to adjudicate the claims of American citizens, from which Spain had been exonerated by the ninth article. They were to meet in the city of Washington, and, within the space of three years from the time of their first meeting, they were "to receive, examine, and decide upon the amount and validity of all claims" provided for in the treaty (among which, as we have seen, was Meade's). They were "authorized to hear and examine, on oath, every question relative to said claims, and receive all suitable, authentic testimony concerning the same"; and the Spanish Government was "to furnish all such documents and elucidations as may be in their possession for the adjustment of said claims according to the principles of justice, the laws of nations, &c., the said documents to be specified when demanded by the commissioners." As before noticed, the claims were all those of which "statements soliciting the interposition of the Government of the United States have been presented to the Department of State, or to the minister of the United States in Spain, since the date of the convention of 1802, and until the signature of this treaty," and the United States undertook "to make satisfaction for the same to an amount not exceeding $5,000,000."

These commissioners met and organized on the 7th of June, 1821, and their powers expired on June 7, 1824.

Mr. Meade did not present his claim to them till January 6, 1822, seven months after their first meeting. In his memorial to them he insisted that Spain was still liable to him, denying the power of the United States to release his claim without full payment; and he also insisted that the United States were bound to make full payment, and protested that his application to one government should be construed as a release of the other. He presented his claim solely in its liquidated form, and claimed full payment in preference to all other claimants. His memorial concluded with two prayers:

1. That the commission would determine whether his claim was included in the renunciations of the ninth article of the treaty.

2. Whether, if so comprehended, he was not "entitled to a substantive and full satisfaction of his claims, whatever may be the pro rata allowance to the general mass of claimants out of the specific fund provided by the treaty."

The commissioners were in doubt at first whether Meade's claim (presented as it was solely in its liquidated form) was included in the treaty. A correspondence ensued between them and Mr. Adams on that subject, in which the latter, on March 9, 1822, stated that it was the opinion of the executive department that it was included, but that the amount and validity of that and all other claims must be determined by the commission—that it was their peculiar province to determine on the validity of the claims, and that the executive department did not have and never had the means of so determining. He also stated explicitly that all the claims should have the same benefit of the provisions of the treaty—

> And be subjected to the same investigation, and be decided upon, not by any subsequent transaction between the claimant and the Spanish Government, but by the

gress sufficient to prevent them; and thirdly, requiring a pledge that the United States would form no relations of amity with any of the revolted provinces of Spain (4 Am. St. Papers, 680).

Not a word was said about these grants. They were introduced into the discussion by Mr. Adams in his letter of May 3, of same year, with the design of fortifying his position, that the United States "would not stipulate new engagements for the purpose of obtaining ratification of the old." On this point he said that the declaration required to be made on the subject of the grants was not adding new terms to the treaty, as was the object of General Vives in making his three proposals, but because it was essential to explain the meaning and clear understanding of both parties at the time the treaty was made, as acknowledged by Don Onis, the Spanish negotiator. General Vives, in his reply to this, dated two days afterwards (Am. St. Papers, 684–5), expressed satisfaction with the answer of Mr. Adams as to the two first points, but not as to his refusal to give the required pledge stated in the third. As to this he referred the answer of Mr. Adams to the King, stating that if it were satisfactory to the King "*the abrogation of the grants would be attended with no difficulty*," adding, "*nor has that ever been the chief motive for suspending the ratification* of the treaty."

It is clear that whatever figure the annulment of these grants may have cut in the negotiations, it was a mere pretext to cover some other motive, or as furnishing an excuse for the proverbial hesitancy, evasion, and delay which then characterized Spanish diplomacy. Nor could Spain, with the slightest pretense to fairness and good faith, insist on the recognition of these grants, as that government well knew. Spain formally proposed to cede the Floridas on 24th January, 1818, and that date was adopted by the treaty, after which all grants of land therein were to be held void.

On February 10, 1818, Mr. Erving, the American minister at Madrid, notified his government that he had information that these grants were made (4 Am. St. Papers, 509).

And Mr. Erving, in his letters to Mr. Adams dated May 14, 1818, and June 12, 1818 (4 Am. St. Papers, 511–512), reported that he had called the attention of the Spanish secretary to these grants and had received the assurance that the council of Indies had been instructed by the King not to allow sales of these lands, and that this was done to *make the cession* (of the Floridas) *as valuable as possible to the United States*, and that as the value of the lands ceded would be greater than the indemnities it was reasonable that the difference would be made up to him by concessions on the other side. On the 18th July, 1818, Mr. Erving wrote to Mr. Pizarro, the Spanish secretary, that the grantees were placed under certain prohibitions relative to these grants, adding "*these prohibitions were considered by you and by me as annulling the grants.*" He then complains that there were some indications that the grant to one of them was being perfected. He also informed Mr. Pizarro *that it was essential* that all the grants made since 1802 should be annulled. Mr. Pizarro on the next day replied, stating that, "*I repeat to you all that I have said on this subject; consequently you may be tranquil.*"

Moreover, it is clear beyond controversy that the treaty was signed with the distinct understanding that these grants were null. On March 10, 1819, a few days after the signature of the treaty, Mr. Adams wrote to Don Luis Onis, the Spanish negotiator, that to avoid any possible misconception he wished his answer to the statement, that the treaty was concluded "with the full and clear understanding between us" that these grants (naming them) are all annulled by the treaty as much

as if they had been specifically named, and that they will be so held. On the same day Don Onis replied, acknowledging the correctness of this statement.

Mr. De Neuville, the French minister at Washington—who, on account of the sickness of Don Onis, assisted on the part of Spain for a short time in the negotiations on 18th March, 1819, in a letter to Mr. Adams, declared "in the *most formal manner that it has been understood—always understood—by you, by the minister of Spain, and I will add by myself, that the three grants of land* made to the duke of Alagon, the count of Punon Rostro, and Mr. Vargas, *were of the number of those annulled*" by the treaty, "*the date of 24th January was proposed and accepted, in the complete persuasion* on one part and the other that *these grants were subsequent to it.*" (4 Am. St. Papers, 652–653.)

It is proper here to remark that the treaty annulled all grants made subsequent to the 24th January, 1818, and that these grants were made about that date, and that they were made to court favorites, and were of such enormous size as to elicit from Mr. Erving, our minister to Spain, the expression that they *embraced the whole of the lands* in the Floridas *not previously granted*, and that they were, perhaps, his (the King's) mode of preparing for a *cheap* cession of the territory to the United States. (4 Am. St. Papers, 509.)

And, finally, when the Cortes ratified the treaty, in October, 1820, and annulled the grants, they had so little faith in the pretensions of Spain as to these grants that they only recommended to the minister to *endeavor* to get some advantage to the nation—*not to Mr. Meade*—on account of the difficulty about them. (See 4 Am. St. Papers, 701.)

This lengthy though necessary examination into the part these grants played in the negotiations show how utterly untenable is the position that their annulment was the consideration of any promise made by the United States to pay the debt of Meade; or even that the demand of the United States, that the clear and full understanding had at the time the treaty was signed that they were null was the cause of the failure of Spain to ratify the treaty within the period fixed by it for ratification. No new article was added to the treaty; not a word in it was changed after its first signature, on 19th February, 1819; and the United States, as before seen, when General Vives made new proposals under the color of explanations, distinctly refused to enter into new stipulations to secure fulfillment of the old.

VI. Equally without support is the alleged liability of the United States to pay Meade upon the assumed ground that Spain offered to pay Meade in land in the Floridas, or that he was prevented from receiving it by the United States. The only evidence on this point is the letter of Mr. Meade to Mr. Adams, before referred to. This letter is dated June 6, 1818, nearly six months subsequent to the date (24th January, 1818) fixed in the treaty, after which all grants made were to be annulled. It does not state that any such offer had been made to him by Spain. He states only that it had been *insinuated* to him that a cession might be made for his claim and an *additional sum in cash to be advanced by him;* and that "no specific proposal had been made" to him. And he showed how little faith he had in the *insinuation*, and how nothing had been done to warrant the present claim we are now refuting, by the statement that if the United States were satisfied to allow him to take land, and he "*should find* it impracticable *to obtain this mode of arrangement*," he "would protest and leave the kingdom, *placing his reliance on the United States Government to secure him* justice in *a provision for the claims of our citizens.*"

But the United States were fully warranted in rejecting the proposition, even if it had been distinctly made instead of *insinuated*. They were engaged in negotiations for a treaty, settling boundaries, all disputes between the two countries, and the claims of the citizens of either country, and for the cession of the Floridas. As an essential part of such negotiations it was proper that the title to the lands should be unaffected by alienations during the negotiations. And, moreover, the United States were endeavoring to provide out of the price to be paid for these lands an indemnity for *all of its citizens* who had claims against Spain; and they were not only under no obligations to prefer Mr. Meade, but were bound to *put all on an equality*. Mr. Meade had no more right to demand of the United States the privilege of purchasing these lands for his claim and *additional money to be advanced* than any other claimant. To have allowed such a privilege would have defeated the negotiations by conceding to Spain the power of wasting and dissipating the fund in the payment of one or a few, to the destruction of the interests and rights of all others; and this, too, of the only fund available for that purpose, she being then utterly unable to pay in money or in any other way.

VII. It is also a fallacy that the agreement of the United States to pay this claim was a part of the consideration for the purchase of the Floridas. As before shown, the United States made no special agreement with reference to this claim. The only agreement ever made was that contained in the treaty, and that bound the United States to pay $5,000,000 in satisfaction *of all the claims of its citizens*, who had asked for their interposition. Nor can it be rightfully said that this $5,000,000 was all that was paid by the United States for the Floridas. The United States claimed to the Rio Grande, and Spain to the Mississippi River, and in the general compromise and settlement of all the disputes, a line was established on the Sabine, and the relinquishment of the claim of the United States west of that river was as much a part of the price of the Floridas as the $5,000,000.

VIII. It is not true that the commissioners decided they had no jurisdiction of Mr. Meade's claim, and refused to entertain it; the exact reverse is true. They did take jurisdiction; they tried the claim. They rejected it for want of sufficient proof, holding that the liquidation on which Meade relied was not proper proof, and they then gave him time to get other proof, and they delayed a final decision until the day before their final adjournment, with the view of affording the opportunity of presenting it. The Supreme Court and the commissioners are in exact accord in reference to this claim. They both held it was within their jurisdiction as an unliquidated claim, and they both held that in its shape, as presented to the commissioners, as expressed in the liquidation, it could not be allowed by them.

On this point we quote from the opinion of the Supreme Court (9 Wall., on page 720):

> Transactions between the claimant and the Government of Spain, subsequent to the signature of the treaty, could not be evidence to the commissioners of the condition of the claim, at the time of that signature, and for that reason the court is of the opinion that the decision of the commissioners *rejecting the claim as expressed in that award was correct. They did not reject the unliquidated claim of the appellant, as filed in the State Department, nor as presented to our minister at Madrid before the treaty was signed.*
>
> Unambiguous as the decision of the commissioners is, there is no reason to suppose that the claimant was *misled even for a moment.* He knew he had a right to present his claim to the commissioners, as they existed at the time the treaty was signed, but he *elected to stand upon the claim as it was expressed* in the award, *and he must abide the result*, as in the opinion of the court the decision of the commissioners that the award was not within the stipulations of the treaty is correct. (See also the opinion of the commissioners; 3 Ct. Cls. R., 348, *et seq.*)

This language ought to put at rest forever the claim of Meade for compensation from the United States.

IX. That Meade had a just claim against the Spanish Government to some, and that, too, to a considerable amount, is certain That, in the manner before pointed out, he has lost the opportunity of presenting it is also certain. That he has no legal claim on the United States for reimbursement is equally certain, and it has been so decided both by the Court of Claims and by the Supreme Court—to the decision and arbitrament of which last-named court Meade in his lifetime was not only willing to submit, but petitioned for that privilege. (See Mr. Everett, Report 3, Ct. Cls. R., on page 323.)

The question now arises as to whether there is any just ground in morals and in right to demand the claim from the United States. That it must be remembered is the question; and not the other, so often presented by indiretion, whether it was not a great hardship on Mr. Meade, that having this just claim, he has failed to realize anything from it, either from Spain or from the fund provided by the treaty. That it was originally a just claim against Spain and ought to have been paid by her is admitted. *She* is *estopped* by the liquidation coming through her own court and approved by the King. That Meade ever had a just right against the United States for the payment of this claim we deny. He did have a claim against a specified fund in the hands of the United States, as the result of the treaty. He knew of this fund; he knew its extent. He was not ignorant of the means of establishing his right in it. But in the outset he rejected the provision which had been made for him, and all other claimants, and insisted on a right against the United States, which they refused to recognize in its inception, and which has been solemnly decided by the Supreme Court not to exist. In the vain pursuit of this unfounded pretension, he neglected to take the proper steps in due time, to assert his undoubted right to share in this fund. He knew that the existence of the tribunal to distribute the fund was *limited by the treaty*, and that its life could not be prolonged by the United States alone, and he allowed its power to die, without properly asserting his claim before it.

X. There is not a single doubt that if he had claimed *under* the treaty, instead of *against* it, the amplest time was allowed for the assertion and proof of his rights. His failure is the result of his own deliberately chosen conduct, pursued in direct contradiction to the expressed opinions of this government as to the proper course, as well as in direct violation of the plain provisions of the treaty. The result is that the whole fund, in exact accordance with the provisions of the treaty to which it owed its existence and disposition, has been distributed among the other claimants, they having proved claims, to a larger amount than the fund itself. There can be no relief now except through the tax-payers of the country. Under these circumstances, however much we may sympathize with him in his loss, however much we may deplore the mistaken counsels which guided his conduct, we are yet constrained to say that to this conduct, and to this alone, is his loss attributable.

Nor is there anything which ought to appeal to the conscience of Congress in behalf of this claim in the fact that the fund itself was confessedly insufficient to pay the demands for which it was provided; nor in the suggestion that the United States, having exonerated Spain from the debt, stood in Spain's shoes, and were bound to make payment equal to the demand. Spain was a sovereign. The demand against her was therefore only binding on her good faith and conscience. It was worth only what these would produce, and no more. It could not be

enforced against her will. The remuneration made by the United States on *the terms agreed to in the treaty*, if unequal to the demands against her, showed clearly that Spain was willing to settle her debts at less than their face value. It did not prevent her from making full payment, nor release her in morals from the obligation to do so. Besides, Spain was, if not actually bankrupt, yet in that condition where the just and legitimate demands on her treasury were constantly unmet. In the letter of Meade, before quoted, of January 6, 1818, wherein he inquired as to the propriety of taking land, we find this significant language: "I feel, however, sensible that to the *want of inclination is to be added the want of means of satisfying my claims.*" (4 Am. St. Papers, 721.) It is also certain that his imprisonment resulted from, and was prolonged on account of, a want of ability in the Spanish Treasury to raise the $52,000 which he had deposited in treasury notes, and which the treasurer had agreed to pay in specie. In addition, an examination of the report of the junta liquidating his claim shows that its amount was swelled enormously by damages allowed for non-payment of money due to him by Spain, being such allowances as are never claimed from, or admitted by, any but nations in the most desperate circumstances, and are utterly inconsistent with any safe or sound business or financial system.

He had submitted his claim to the good offices of his government to press for a settlement against a nation confessed by himself to have neither the money nor the inclination to pay. Many others had done the same; and what was provided for these claims by the treaty was all that could be obtained after years of remonstrance, and worrying, and often delusive negotiations.

Nor is there anything in the suggestion that the *liquidation* was advanced and facilitated by the good offices of the American minister at Madrid, and that its attainment was regarded by Mr. Adams with "no little gratification," and that afterwards the commissioners, in accordance with the treaty, rejected it as proof of the claim. The active interposition of the American minister took place at the request of Meade, and *before* the signature of the treaty. What he did afterwards was merely to transmit, at Meade's instance, his memorial on that subject. But conceding to the suggestion its full extent, there is nothing in the fact that the American minister, at the request of Meade, aided in securing the liquidation, or that Mr. Adams, on the 6th September, 1820, *after* the failure by Spain to ratify the treaty in due time, and while it was doubtful whether it would ever be ratified, congratulated Meade on his success. Meade was at perfect liberty to prosecute his claim even to final payment, notwithstanding the pending negotiations for a treaty in which provision was sought to be made for it. The treaty, too, might fail, and whatever progress was made in the mean time was, in that event, so much gained. And if the treaty should be ratified without payment of the claim in pursuance of the liquidation, it was in no worse condition, treated as an unliquidated claim, than it would have been without liquidation. That the vouchers were surrendered amounts to nothing, since the treaty provided for their delivery to the United States on the call of the commissioners, and they would have been surrendered, as the event showed, but for the conduct of Meade himself. But, in addition to this, it was absolutely essential to the rendition of justice that means should be provided by the treaty for the determination of the *amount and validity of each claim* upon its merits as it existed at the date of the treaty. It was also necessary to a proper equation of this fund that all claims should be settled by *the same tribunal*. All the

claims, except a portion of Meade's, were founded in tort, where the amount to be allowed on each would depend in a large degree upon the *discretion* and peculiar views of the tribunal making the allowance. To have permitted a part of these claims to be settled by one tribunal, and a part by another, would therefore necessarily have resulted in injustice in the equation, since from the constitution of human nature, where no certain and fixed standard exists, the same injuries would be estimated at different sums by different tribunals. To have left the settlement of these claims to Spain would have been unsatisfactory, since that would have been a surrender of the determination of the just rights of citizens of the United States to a fund in their hands to a government having no further interest in the settlement, and would have subjected their rights to the caprices, partialities, and dislikes of the favorites of the court. Spain would equally have objected to leaving it to the United States, who would then be directly interested in rejecting just claims, so as to lessen the amount necessary for their payment. So an independent and competent tribunal was agreed on by both parties, whose decisions, at least in this case, have received the sanction and approval of the highest court of the Union. The proceedings of the Spanish junta in this very case well warrant the provision which required all claims to be presented as unliquidated.

The allowances are excessive in interest, damages, and exchange amounting all together to the sum of $373,879.88. It is certain that a large portion of the claim would have been rejected in any other country. Some reason for this is shown in the report of the junta before whom the liquidation took place. It appears from this report that the vigilance of the junta was put to sleep by a verbal statement of Meade, as follows: "That he desires merely to have his claim settled in order *to claim the amount from the Government of the United States*, in case that the treaty pending between the two nations should be ratified; *on the contrary* [happening], he would propose to His Majesty to receive the amount in lands or *in some other way* in America, being persuaded, *as he was, of the impossibility of his being paid here on account of the present state of* the finances of the nation."—3 C. Cl. R., 419.

And in a second report which the junta made on 15th November, 1820, in their argument showing why they had made the large allowance, they use this remarkable language:

> Besides the honor of terminating this business, the royal *finance* would have this advantage, that the creditor (Meade) *being disposed to compromise the matter and make some sacrifice would willingly accept the half* of what, after further examination and discussion, he could not but claim *in totum;* the arrangement for the payment remaining pending, in which the creditor likewise, taking into consideration the peculiar circumstances of the state, reserves to himself the right of making propositions, *which* would be in conformity to his generous attachment to the cause of Spain.—(3 Ct. Claims R., 435.)

It is thus seen that this liquidation was produced by a desire to *save the honor of the King* by swelling the amount, in the hope that it would be *paid by the United States;* or, failing in that, that the creditor would compromise the claim at one-half, and relieve the national treasury by accepting satisfaction in lands situated in America; the finances being in that desperate condition which rendered payment "*impossible*" in Spain.

That the United States had provided for a commission to decide on the amount and validity of this claim, honestly and on its merits, with the same justice meted out to their other citizens, and which would be uninfluenced by the peculiar motives entertained by the junta in respect

to the honor of the King, which permitted a swelling of the allowance if t be paid by the United States, and unmoved by motives of compromi looking to a deduction of one-half, inspired by the bankruptcy of th Spanish treasury, and the generous attachment of Mr. Meade to th cause of Spain,—is thus well justified by the action of this junta. certainly furnishes no ground for a demand on the Treasury of th United States, however different its condition may be to the banl ruptcy of that of Spain. That Mr. Meade was influenced in the pe sistent and vigorous opposition which he made to the reinvestigatio of his claim by the American commissioners by a consciousness tha the amount of his claim would necessarily be largely reduced, w will not allege. His character for honor and integrity is unimpeache It is most probable that smarting under the sense of wrong and inju tice received at the hands of the Spanish authorities, wearied and wor out by years of vexatious delay, and shrinking in his old age from trial in which he was, to use his own language, to meet "contestation from unknown parties and mere intermeddling strangers * * * influenced by an eager emulation for the apportionment of an inad quate sum," he was unable to see the justice of the provision in th treaty which demanded the reinvestigation before the commissioner

We notice only one more argument in support of the claim, first brough forward by Mr. Meade in his memorial to Congress, and afterwards san tioned by the high authority of Mr. Forsyth. This argument is, that th failure to get the vouchers in time, and the consequent loss of his clai were the result of "imperious circumstances" beyond human contro We have shown, we think, that this argument wants the necessar support of fact, as it was based on a misconception of the treaty, as the duty of Spain to furnish the vouchers otherwise than on the deman of the commissioners made through the United States. We have al shown that the failure resulted from Meade's own conduct. But if th position were founded in fact, it cannot be justly made the ground of demand on the United States. If the United States had been bou by the treaty to make full payment to Mr. Meade, and he had been pr vented by inevitable accident from proving it within the time prescribe and thereby the United States had been relieved from a burde justly imposed on them, there would be great equity in an applicatio to enlarge the time in which the proof could be made. So, if the remained a surplus of the fund in the Treasury, after the payment all other claimants, whereby the United States would gain the amount such surplus, there would be an equal equity in allowing Mr. Meade the o portunity of establishing his claim to it, of which he was deprived "b imperious circumstances." But such is not the case here. The Unite States were not bound to pay absolutely any of the claims. They we bound only to distribute a fund, of which they were merely stakeholde or trustees, among those who should establish their interest in it, in th mode, and within the time fixed by the treaty. The distribution ha been made, and the whole fund paid out—not a dollar of it remains the possession or under the control of the United States. Conceding a this argument does, that the United States are without fault, either the making of the treaty or in its execution, the proposition to pay M Meade out of the Treasury a sum raised by taxation from the people the United States, because from circumstances beyond his control h was prevented from gaining a cause pending in a court, is nothin more nor less, if acceded to, than to make the United States a guarant to its citizens against losses every day occurring from the acciden of life, and inseparable from the conduct of human affairs. The go

ernment has no power to do this. To embark in that course of legislation would be to pervert the ends for which government is established; it would be to seize on the part of Congress a jurisdiction over private affairs not granted by the Constitution, and which no human institutions can wisely exercise; and to grasp an unlimited power of taxation inconsistent with the possession and enjoyment of private property. That Mr. Meade's case is a hard one, we admit; that it appeals strongly to the sympathies of Senators, as individuals, is undeniable; but that it constitutes no just claim on the Treasury, and cannot be paid without inflicting a great wrong on the people of the United States, and establishing a pernicious and unconstitutional precedent, we do not doubt has been abundantly shown.

We therefore recommend that S. bill 305, providing for the payment of this claim, be indefinitely postponed.

ANGUS CAMERON.
J. L. PUGH.
J. Z. GEORGE.

NOTE.—We call especial attention to the speech of Hon. Silas Wright, New York, in the Senate of the United States on January 18, 1838, in which the invalidity of this claim is maintained with great force and clearness. See Congressional debates of that date and 3 Ct. Cl. R., p. 127 *et seq.*

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 655.

# IN THE SENATE OF THE UNITED STATES.

MAY 29, 1882.—Ordered to be printed.

Mr. GROVER, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 400.]

*The Committee on Military Affairs, to whom was referred the bill (S. 400) authorizing full pay to Lieut. Frederick Schwatka, United States Army, while on leave to serve in command of the Franklin search expedition in the Arctic, having considered the same, respectfully report:*

It appears that a bill similar to the one under consideration has been before the Military Committee of the House of Representatives during the present session, and was very fully and carefully considered by that committee. Their report in the case, No. 933, shows the following facts:

That Lieutenant Schwatka, of the United States Army, in June, 1878, on leave of absence, granted for that purpose, commanded an Arctic search party, the object of which (founded upon certain information) was to explore the Arctic regions in and around King William's Land, to make discovery, if possible, of the remains, relics, and records of the British exploring expedition of Sir John Franklin, searching for a northwest passage, whose whole party perished in that region in 1848–'49.

He and his party of four other persons left New York Harbor in the whaling ship Eothen June 19, 1878; landed at Depot Island, in North Hudson's Bay, August 8, 1878, and there having collected a party of seventeen Eskimo proceeded, April 1, 1879, with dogs and sledges to King William's Land.

The main results of that expedition, as briefly as they can be condensed, are as follows:

It was the longest sledge journey ever made, both in regard to time and distance, having been absent from its base eleven months and twenty days, and having traversed 3,251 statute miles.

It is the first sledge journey conducted through the heart of an Arctic winter and encompassing nearly the whole duration of that unfavorable season, having been absent from April 1, 1879, to March 20, 1880.

It experienced the coldest temperature ever recorded by white men traveling in the field, not only for a single observation, —71° Fahrenheit, but also in regard to protracted cold, there being sixteen days whose average shows 100° below the freezing point, and twenty-seven days when the thermometer stood below —60° Fahrenheit.

It is the first Arctic expedition whose sole reliance for the subsistence of itself and draft animals has been premeditately placed in the game of the locality, and whose experience in that respect has been spread continuously over every month of the year, it having started with less than one month's full rations.

It was the first expedition wherein the white men of a party lived solely upon the same diet, *voluntarily assumed*, as its native allies, which fact, coupled with those already stated, plainly shows that white men are not only able to live the same as Eskimo in the Arctic, and with equal comfort, but also to prosecute any projects that their superior intelligence or ambition may dictate or desire, and under *all* the circumstances that the natives themselves would venture to undertake for less laudable objects.

It was the first and only party to plant the American flag at the north magnetic pole, and its researches in that direction are interesting and fruitful.

In its searches the party was the first to make an extended summer's exploration over the ground covered by the unfortunate crews of Sir John Franklin's ships, in their endeavors to reach aid, although a map will show that their base in North Hudson's Bay was in a far less favorable position for such an nndertaking than that of the greater majority of the numerous searchers who preceded them.

It performed the last sad rites for the remains of the lost crews, owing mainly to the favorable circumstance of a summer's sojourn. Says Lieutenant S., in his report to the American Geographical Society: "From the thoroughness of the search, and the conspicuous contrast of the bleaching bones with the brown claystones composing the flat coasts of King William's Land, and adjoining mainland, I do not hesitate to state that not a single unburied man of Sir John Franklin's expedition probably exists. Where nature had not anticipated my party, or the retreating crews themselves performed the burial, we completed these sad offices."

It established the loss of the records of the Franklin party beyond all reasonable doubt. As these alone have been the main incentive to the many expeditions since the establishment of the loss of the party, this success, although unfortunately of a negative nature, is of no small character, since this loss, coupled with the loss of the party and the burial of their dead, must necessarily settle the Franklin problem in all its important aspects.

* * * * * * *

Admiral Sir George W. Richards, of the Royal Navy, and an officer of three previous Franklin searches expeditions. says in a letter to the London Times: "Comment on this remarkable undertaking of Lieutenant Schwatka seems to be almost superfluous. So far as I know it stands unrivaled in the annals of the Arctic, or, indeed, of any other enterprise of modern times, and one knows scarcely which to admire most, the boldness and audacity of its conception or the unswerving devotion and perseverance which brought to a successful conclusion. * * * And so I believe that Lieutenant Schwatka's search for Sir John Franklin's records may be considered final."

Speaking of this expedition, the journal of the Royal Geographical Society (London), of November, 1880, said:

The achievement of Lieutenant Schwatka and his companions is most remarkable, and in many respects his journey is without a parallel. It reflects the highest credit on the commander and on those who served under him so admirably, and it is certain that the work could not have been done without natural qualities of a very high order, combined with careful training and the most thoughtful adaptation of the best attainable means to the end in view. The English nation, and more especially its naval service and its geographers, have received the news of this noble effort with feelings of warm gratitude to Lieutenant Schwatka and his gallant companions.

Upon the same subject the London Times, September 25, 1880, made reference to this remarkable search in the following language:

The veteran Arctic explorers express a natural regret that the success which Lieutenant Schwatka has won should not have been achieved by their own countrymen * * * Lieutenant Schwatka has now resolved the last doubts which could have been left. He has traced the one untraced ship to its grave beneath the ocean, and cleared the reputation of a harmless people from an undeserved reproach. He has given to the unburied bones of the crews probably the only safeguard against desecration by wandering wild beasts and heedless Esquimaux which that frozen land allowed. He has brought home for reverent sepulture in a kindlier soil the one body which bore transport. Over the rest he has set up monuments to emphasize the undying memory of their sufferings and their exploit. He has gathered tokens by which friends and relatives may identify their dead, and revisit in imagination the spots in which their ashes lie. Lastly, he has carried home with him material evidence to complete the annals of Arctic exploration. There is no longer any secret when and where the admiral, his officers, and his men sickened, fell down and died. What the unfortunate explorers did is known, and how they did it. Perhaps it may be thought that, now the book of Sir John Franklin's romantic tragedy can be closed, the fruitless, ungrateful, sullen Polar seas may be left to their dead and dull repose.

The report of the Military Committee of the House, before referred to, concludes as follows:

Lieutenant Schwatka asks by this bill to be regarded as on duty while in command of the expedition, and to receive all the pay and emoluments that would accrue from uch an act the same as if ordered on the expedition. In brief, he asks for a continuous ecord of duty, full pay, mileage, and commutation of quarters. Such, a record full pay, and mileage over such of the routes as he was compelled to travel at personal expense would be guaranteed by the act placing him on duty for the time asked.

Commutation of quarters has been granted other officers now on duty in the Arctic, and upon this precedent this is also asked. In short, Lieutenant Schwatka asks that the same privilege *in toto* be granted to him, in a retroactive sense, as has been guaranteed others before their departure for Arctic duty.

Precedents for officers of the Army and Navy on duty in the Arctic are not only abundant, but even for those engaged in the identical duty on which Lieutenant Schwatka was sent, *i. e.*, the general search for Sir John Franklin's party, or its records, &c., as in the expeditions known as the first and second Grinnell expeditions, commanded by Lieutenants De Haven and Griffin, United States Navy, and Dr. Kane, United States Navy, extending from 1850 to 1854.

Henry W. Klutschak, esq., a companion of Lieutenant Schwatka in this expedition, on returning to Austria, his native country, received decorations and high honors conferred upon him by the Austrian Emperor for the subaltern part borne by him in this expedition. Would it not be humiliating to the proud-spirited people of our great republic that the brave commander of this expedition should be strictly held to half-pay as a United States Army lieutenant for the distinguished part borne by him in it? Your committee feel that it would be so, and therefore report back the accompanying bill, and recommend its passage.

It is noteworthy that this small party under Lieutenant Schwatka, consisting of but four white men and himself, with a few Esquimaux, traversed every part of King William's Land which was visited by Sir John Franklin's expedition, and returned without loss and without accident of any kind; while the ill-fated crews of the English exploring vessels, numbering 105 of England's bravest and hardiest men all perished in the same region, leaving not a soul to tell the story of their misfortunes.

Your committee therefore recommend the passage of the bill with the following amendments, viz: In line 9, after the word "pay," strike out the words "and commutation of quarters;" and in line 12, after the word "eight," strike out the word "via," and insert the word *to*, and after the word "city," in the same line, strike out the words "to North Hudson's Bay."

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 656.

# IN THE SENATE OF THE UNITED STATES.

MAY 29, 1882.—Ordered to be printed.

Mr. LAPHAM, from the Committee on Privileges and Elections, submitted the following

# REPORT:

*The Committee on Privileges and Elections, to whom was referred the petition of Maria G. Underwood, administratrix of John C. Underwood, deceased, asking payment for salary and mileage of the said John C. Underwood from the 4th of March, 1865, to the 4th of March, 1871, have considered the same, and respectfully report:*

That on the 9th day of December, 1864, the petitioner's intestate was duly elected a Senator from the State of Virginia, for the term of six years from the 4th day of March, 1865; that he received a certificate of such election in the words and figures following:

VIRGINIA, *to wit:*

The legislature of this State having, on the ninth day of December, 1864, in pursuance of the Constitution for the United States, chosen John C. Underwood, esquire, a Senator from this State for six years from the fourth day of March next, I, Francis H. Peirpoint, being governor of the Commonwealth, do hereby certify the same to the Senate of the United States.

Given under my hand and the seal of the Commonwealth this the fourteenth day of December, 1864.

[SEAL OF VIRGINIA.] F. H. PEIRPOINT.

By the governor:

W. J. COWING,

*Secretary of the Commonwealth.*

That the said John C. Underwood duly presented his certificate and credentials as aforesaid, on the 9th day of March, 1865, to the Senate of the United States, and made efforts to obtain his seat in the said Senate, traveling from his home in Virginia to the city of Washington from time to time, and incurred a very considerable expe nditure of time and money in so doing; that on the same day of the election of said John C. Underwood one Joseph Segar was also duly elected a Senator from said State and presented his credentials to the Senate; that neither the said Segar nor the said Underwood were admitted to take their seats in the Senate; that the said Segar duly presented his memorial to the Senate during the Forty-fifth Congress, at its second session, asking payment for his salary and mileage as Senator from the 9th of December, 1864, to the 4th of March, 1869, which was referred to the Committee on Privileges and Elections, and the committee recommended the passage of a resolution in words and figures following:

*Resolved*, That there be allowed and paid out of the contingent fund of the Senate to Joseph Segar the sum of $5,000, in full compensation for his expenses in prosecuting his claim to a seat in the Senate as a Senator from the State of Virginia,

Which resolution was adopted by the Senate, and the amount therein named was paid to the said Segar. The report of the committee in Segar's case contained the following statements:

If the petitioner had been admitted to the seat which he claimed, his salary and mileage would have amounted to more than twenty-one thousand dollars. He was not admitted, and having never performed the duties of a Senator, under the most recent precedent he is not entitled to compensation and mileage as such. By the same precedent, if he prosecuted in good faith and on reasonable grounds a claim for such seat, he should be allowed a moderate compensation for the expenses incurred by him in such prosecution.

On the 23d day of February, 1863, the legislature of Virginia assembled at Wheeling, in said State, the greater portion of the State, including the city of Richmond, its former seat of government, being then in rebellion, and elected one Bowden a United States Senator from that State. Said Bowden was admitted to his seat, the Senate thereby recognizing the legal existence of the legislature which elected him. West Virginia, including the city of Wheeling, was then erected into a separate State. The legislature of Virginia, after such formation of a new State, assembled at the city of Alexandria and continued the functions of a State legislature of Virginia. Said Bowden died on the 2d of January, 1864, and said Segar was elected to succeed him at the same time of the election of John C. Underwood, as aforesaid.

The committee in Segar's case further reported as follows:

The Alexandria government was recognized as a valid State organization by President Lincoln in his amnesty proclamation of December 8, 1863. It gave its constitutional assent to the adoption of the thirteenth amendment of the Constitution of the United States, and its assent is treated by Mr. Seward in his proclamation announcing the adoption of the amendment as necessary thereto.

Under these circumstances, the petitioner was well warranted in presenting his claim to a seat in the Senate. If the practice then prevailing were now acted upon he would receive full salary and mileage. The Senate in the cases of Ray and McMillan, at the present session, preferred to allow to such claimants only a compensation for reasonable and moderate expenses. As this is a new rule, it would be clearly unjust to require of claimants to furnish minute items and vouchers. We think the sum of $5,000 a reasonable and moderate allowance to Mr. Segar for three years' prosecution of his claim. We therefore recommend the passage of the accompanying resolution.

The cases of said Underwood and Segar are alike in all respects, except the terms for which they were chosen. It is true no actual service as Senator was rendered by either, but each stood ready to perform his duties whenever the Senate should allow it; that the said Underwood performed no such service was the fault of the Senate, not his. The precedents fully justify the allowance to said Segar and the allowance asked by the petitioner. The House of Representatives has frequently paid large sums of money to unsuccessful contestants for seats in that body; and the Senate, at the same session during which the allowance was made to Segar, also paid Messrs. Ray and McMillan, and has also paid two claimants for seats from the State of Georgia, although none of them were allowed to occupy their seats in the Senate. The valuable services rendered by said Underwood to the government in its struggle for national supremacy are matters of history and need not be here repeated. We think the sum allowed and paid to Mr. Segar is a precedent which should be followed in this case, and recommend the passage of the accompanying resolution:

*Resolved*, That there be allowed and paid out of the contingent fund of the Senate to Maria G. Underwood, administratrix of John C. Underwood, deceased, the sum of five thousand dollars, in full compensation for the time and expenses of said John C. Underwood in prosecuting his claim to a seat in the Senate as a Senator from the State of Virginia.

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 657.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1939.]

The Committee on Claims, to whom was referred the bill (S. 1939) by which $1,750 is proposed to be paid to the Protestant Orphan Asylum at Natchez, for the use and occupation of their property during the late war, have considered the same, and hereby adopt the following report of the Committee on War Claims made to the House of Representatives, Forty-fourth Congress, as follows, and recommend the passage of the bill, as amended:

That said orphan asylum was established in 1816 at Natchez, Miss., and incorporated in 1824 by the legislature of Mississippi; that at the commencement of the late war, and up to March, 1864, when said property was taken possession of by the military authority of the United States, said asylum was used for support, protection, and education of Protestant orphans from Adams County and the city of Natchez; that when said asylum was taken possession of it was in a flourishing condition, but the inmates were soon removed and lines of fortifications extended around the buildings, and the buildings themselves and the furniture used for military purposes; that during the time of its occupancy by the military authorities one of the buildings was destroyed and the furniture made way with—used up or destroyed; that by an order of the commander, General Sherman, a board of officers was convened to value the property, and that board assessed the value of the property at some $10,000; but it was not wholly destroyed, as at first contemplated, but one of the houses only attached to the asylum, together with the furniture, shrubbery, flowers, &c., so that when the property was restored in 1865, after the war, to the authorities of the asylum, it was in a greatly dilapidated condition. Many thousand dollars have been spent upon the property since—money contributed by citizens and raised by fairs held for the benefit of the orphans. But those sources having failed, the trustees and managers now appeal to Congress for compensation in some sort for the injury which has been inflicted upon a charitable institution. In view of all the circumstances, your committee do not see how, under the law, they can recommend full compensation for the great damage sustained by this institution, but they are *unanimously* of the opinion that the government should pay full rent for the time the property aforesaid was used by the authorities of the United States, some sixteen or eighteen months, and to that end report a substitute for said House bill, paying to the trustees and managers of said orphan asylum $1,750, for the use and occupation of their building by the military forces of the United States.

From the unanimous report above set out of the War Claims Committee, this committee are led to infer that there was an express or implied contract to pay for the use and occupation of the property. Though this is not entirely clear, your committee, however, in view of the fact that Congress has with great unanimity given relief to the destitute in the overflowed districts, are disposed to waive strict proof of such agreement, and unanimously recommend the passage of the bill, as amended by the committee.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 658.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1708.]

*The Committee on Claims, to whom was referred the bill (S. 1708) for the relief of James Riley, beg leave to report as follows:*

That in the year 1868 John Corland, second lieutenant of the Sixth Infantry, United States Army, and acting assistant quartermaster, on behalf of the United States, entered into a contract with the said James Riley, of the Choctaw Nation, for the running of a saw-mill belonging to Riley, for the joint benefit of Riley and the United States.

This contract was for the term of six months, and by it Riley was to furnish the mill and pay the engineer and sawyer, and the United States were to furnish all the other labor, and the lumber cut was to be equally divided between Riley and the United States. Very soon after the contract was entered into, and before anything was done by Lieutenant Corland to carry it out, an Indian war broke out in the neighborhood. This war compelled an employment of all the United States troops in that region, so that Corland was unable to furnish the labor as he anticipated and had promised. Riley was notified of this inability, and that Corland would not and could not perform his contract. Nevertheless, Riley employed and paid the engineer and sawyer, and allowed his mill to stand idle for the whole term of six months. Riley having died, his administrator prefers this claim for an adjustment and settlement of the damages he sustained, by a reference of the controversy to the Court of Claims, who are to determine it, in the language of the bill, "on principles of equity and justice."

We do not believe such a reference should be made:

1. Because the contract was entirely null and void, neither Lieutenant Corland, who made it, nor Major Roy, who approved it, having any power to make it.

2. If there was any equity in the claim arising from the ignorance of Riley as to the powers of the above-named officers, it is fully met by the notice given that the contract could not be carried out. It was Riley's duty then to have gone on with the operation of his mill, and thereby prevented any loss or damage from the non-performance of the contract. It is a well-settled principle of law and morals that a party cannot claim damages for the breach of such a contract if they might, by reasonable diligence on his part, have been avoided. In such cases the party cannot sit down, do nothing, and claim compensation for losses which resulted from his own negligence.

7TH CONGRESS, 1st Session. | SENATE. | REPORT No. 659.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 719.]

*The Committee on Claims, to whom was referred the bill (S. 719) for the relief of the representatives of Sterling T. Austin, deceased, have considered the same, and respectfully report:*

The facts are set forth in a report made to the House of Representatives by Mr. Thomas Updegraff, which we adopt, which is as follows:

*The Committee on War Claims, to whom was referred the bill (H. R. 2706) for the relief of the representatives of Sterling T. Austin, report as follows:*

At the breaking out of the war of the rebellion, Sterling T. Austin, sr., was the owner of a plantation in Carroll Parish, Louisiana, known as the "Three Bayou place," situated some 3 or 4 miles from Bunche's Bend or Old River, containing 2,380 acres, of which 900 were cultivated. In the spring of 1863, there were on the place the cotton crops of the years 1861 and 1862, respectively, amounting to upwards of 1,200 bales, averaging 440 pounds each, 82 mules, 100 head of cattle, 300 hogs, 10,000 bushels of corn, 8 yoke of work cattle, 6 wagons, carpenter and blacksmith tools, plantation tools, library of 300 volumes, family portraits, household and kitchen furniture—claimed to be worth $300,000. In the summer of 1862, Mr. Austin, for sanitary reasons, removed his family, consisting of his wife and three minor children—two daughters and a son—to Georgia, himself remaining in Louisiana. In the spring of 1863, procuring a pass through the Federal lines at Natchez, Miss., he went to Georgia for his family. During his absence all the movable property on his plantation, described above in general terms, was, by order of General J. B. McPherson, military commander of that district, seized and carried away by the military forces. The mules, forage, and supplies were applied to the use of the Army, and the cotton shipped north to Memphis, or invoiced over to the authorized officers of the government by J. E. Jones, formerly lieutenant and quartermaster of the Sixteenth Wisconsin Volunteers, now of Carroll County, Iowa. The levee at Ashton was cut by the Army, and his whole plantation submerged. He came back, after the water had receded, to a scene of desolation and enforced desertion. In consequence of his well-known Union sentiments, and the absence of anything like legal protection, a residence among his old neighbors was both unpleasant and unsafe.

In the autumn of 1863, with his family and his negroes, of which he had a large number, he removed into Texas, remaining in San Antonio till after the close of the war, when he removed to Galveston. While at Galveston, in 1865, he went up the railroad during the summer and bought up scattered lots of cotton, all of which were seized by the agents of the United States Treasury. He then formed a partnership at Galveston, purchased the schooner Mary Lee, and entered the Mexican trade; removing to New Orleans late in 1865. The annual overflow of his old plantation meanwhile rendered it untenantable. In 1867 the schooner was wrecked and became a total loss. In this year it appears that Mr. Austin placed his claim against the government in the hands of Judge Lewis Dent for collection, and he seems to have relied implicitly upon this attorney. After the loss of the schooner, Mr. Austin again turned his attention to planting, and purchased another plantation in his old parish of Carroll. He became postmaster at Lake Providence, and in 1870 removed his family from New Orleans. Meanwhile the son, Sterling T. Austin, jr., had grown into manhood,

been admitted to the bar, became prosecuting attorney and then parish judge. In 1871, according to General Negley's recollection, in 1872 or 1873, according to others, Mr. Austin was in Washington pushing his claim, surprised and indignant at Judge Dent's failure to prosecute it. It is quite certain he was at the capital in each of the years 1873, 1874, and 1875. In May, 1873, he made, with Charles E. Hooey, esq., an attorney of Washington, a contract to prosecute the claim, the original copy of which is among the papers before the committee. There is also another original contract for the same purpose among the papers, dated in February, 1875, signed by Mr. Austin and John A. Grow & Co., then a firm of attorneys or claim agents in Washington. In January, 1874, a petition for relief on account of these seizures was presented to the Congress, but no evidence of any action thereon has been found.

On the 9th day of July, 1879, Sterling T. Austin, sr., while still postmaster at Lake Providence, La., was shot dead in broad daylight in the open street of that village. The son, Sterling T. Austin, jr., still parish judge, hearing the shot and being informed that his father was the victim, went at once to the rescue and was met and shot down in the same place by the same person. The son lingered a few days and died of his wounds. After the burial of father and son the widow and daughters sought to collect and preserve the business papers of the deceased, but found their offices had been despoiled and all their private business papers had been carried away or destroyed, and have never since been recovered.

The widow and remaining children now ask that they be permitted to prosecute in the Court of Claims of the United States their demands against the United States, and that they be permitted to recover the reasonable value of such property as they can show to the satisfaction of the court was owned by and taken from Sterling T. Austin, sr., by the military or civil authorities of the United States, in the years 1863, 1864, and 1865, and applied to the use of any of the forces of the United States or consigned to any of its authorities for sale or otherwise and not restored to the owner, any statute of limitation to the contrary notwithstanding.

It is believed there never has been an officer or tribunal having jurisdiction to adjudicate the whole of this claim. No part of it seems to come within either of the four classes of claims to which the jurisdiction of the Court of Claims has been limited. As adjudications under the act of 1864 were in express terms confined to claims for quartermaster's stores and for subsistence "*furnished*" to the Army, it is very questionable, to say the least, whether or not they could have been extended to even the very small portion of this claim which was for stores and supplies "*taken*" and not "*furnished.*" It seems that the act of March 3, 1871, establishing the Southern Claims Commission, did confer jurisdiction of that part of this claim which is for "stores or supplies *taken* or *furnished*" for the use of the Army: this part, however, is small. Under this act, moreover, the period for filing claims never extended beyond the two years between March 3, 1871, and March 3, 1873.

A portion of this claim, it seems, might have been prosecuted under the "captured and abandoned property act" of March 12, 1863. Under this act all claims not presented within two years after the suppression of the rebellion are barred. This bar must have taken effect at or near the time the claim was placed in the hands of Judge Dent. Under the "cotton claims" act of May 8, 1872, it is certain but a small portion of the demand could have been adjudicated; and under this act six months only are allowed for filing claims. It therefore appears that no officer or tribunal ever had jurisdiction of the entire claim; and the period during which any part of it might have been presented did not exceed two years, and these two years are those immediately following the close of the war. To those who remember the confusion, doubt, distrust, and uncertainty of that period, and consider the distance and unfamiliarity at which Mr. Austin lived from the national government, the delay will not seem strange. Doubtless if Mr. Austin or his son had survived, or even if their private papers could be examined, better reasons for delay could be furnished. Under all the circumstances, the committee think it would be a great hardship to require further explanation of laches, and believe the claim ought to be carefully and judicially examined.

From the evidence before the committee the loyalty of the family seems to be well established; yet, in order that this question may not be foreclosed on testimony merely *ex parte*, your committee recommend that the bill be amended by adding after the last words the following: "*Provided, however*, That it be shown to the satisfaction of the court that neither Sterling T. Austin, sr., nor any of his surviving representatives, gave any aid or comfort to the late rebellion, but was throughout the war loyal to the Government of the United States."

With this amendment your committee report the bill back to the House, with the recommendation that it do pass.

## We add a very clear statement of the case by Judge Shellabarger:

WASHINGTON CITY, D. C., May 27, 1882.

DEAR SIR: In pursuance of the suggestion which you were kind enough to make, a few days ago, regarding the claim pending before your committee, for the proceeds

of cotton and other property taken by the military authorities of the United States, in 1863, in Carroll Parish, Louisiana, belonging to Sterling T. Austin, we now make to you the following statement regarding that claim:

I. We cannot, in this statement, add anything to the information contained in the affidavits now before your committee, regarding the character of the claim, or the amount, value, character, or other particulars of the property so taken; nor did we understand that you desired, from us, any of these details.

The fact is, the property taken from Carroll Parish, Louisiana, was, in general terms, about 1,200 bales of cotton and a large amount of "farm property," such as mules, horses, corn, &c. The bulk of the claim, in value, was the cotton, though the farm property was worth many thousands of dollars.

The testimony before the committee explains why (viz, owing to the neglect of Judge Dent) the part of the claim for proceeds of cotton was not presented for collection under the captured and abandoned property act of the 3d March, 1863 (12 Stats., 820).

If any part of the said farm property so taken could have been collected under the Southern Claims Commission act of the 3d March, 1871 (16 Stats., 524), then we suppose that the failure to collect under that act is also to be explained by the neglect of Judge Dent, who was employed and authorized to collect it in any lawful way.

The great bulk of the loss, however, was for the cotton, and it is perhaps not very material to explain, regarding the farm property, any supposed laches; as if the proceeds of the cotton are allowed, it will, probably, be as much as the heirs hope for. The proceeds of the cotton never could have been collected before the Southern Claims Commission. (See sec. 2, 16 Stats., 524.)

II. The testimony before the committee shows, as we think, the utmost diligence on the part of Mr. Austin, in his endeavors to collect this claim, and that this claim is not a stale one in the sense that the owner of it has ever ceased diligently to endeavor to collect the claim.

III. In regard to the honesty of this claim, as for example, whether Mr. Austin owned the property, whether it was taken by the military authorities from him, whether it was received by the United States in such sense as contemplated by the said act of March 3, 1863, and in such sense as to make the United States trustee of the owner thereof, as explained in such cases as Klein's case (13 Wallace, 238), and which on principles of justice clearly the government ought to pay to the citizen, are all matters which the bill before you refers, for investigation and decision, to the Court of Claims. It will be impossible for these heirs to collect a dollar of this money, under the proposed bill, unless th y affirmatively prove, to the satisfaction of a court, sufficiently vigilant of the rights of the government, every one of the foregoing propositions.

Hence, so far as these propositions are concerned, we hope that no further proof will be deemed requisite in Congress than such *prima facie* proof as will induce the Congress to send the matter to the court for full proof.

IV. We apprehend that one of the objections to the legislation here proposed will be the "precedent" it furnishes.

We trust that the suggestions we here make may, in this case, be deemed sufficient to overcome the objection on the score of "precedent."

One suggestion is that vast amounts (and a multitude) of such claims (only less meritorious) have already been allowed by Congress.

On page 11 of Executive Document No. 189, Forty-fourth Congress, first session, being a letter from the Secretary of the Treasury, 7th August, 1876, will be found a report of twelve different special acts of Congress (giving their dates), where payments for cotton to the amount of $292,105.51 were provided for. In the same report you will find the following claims for cotton, taken in the same Carroll Parish by the military authorities, were recovered in the Court of Claims, viz:

| | |
|---|---|
| Benton (p. 16) | $34,625 79 |
| Tebbits (p. 16) | 19,225 24 |
| Benton (p. 16) | 1,113 21 |
| Wyly (p. 16) | 20,124 10 |
| Spencer (p. 22) | 4,545 81 |
| Ross (p. 24) | 34,367 98 |
| Witkowski (p. 25) | 45,578 50 |
| Williams (p. 26) | 7,000 25 |
| Watts (p. 26) | 21,307 94 |
| Executor of Reilley (p. 26) | 37,350 92 |
| Executor of Morgan (p. 26) | 21,870 68 |
| Witkowski (p. 21) | 92,547 00 |
| Tebbits (p. 24) | 197 64 |
| Benton (p. 31) | 371 07 |

There is, of course, no significance in the fact that the above specified judgments were for cotton taken in Carroll Parish, Louisiana, more than attaches to any *other* claim mentioned in said list C, beginning on page 12, except that these above-named recoveries were from the same locality with Mr. Austin's cotton, were taken at the same time, substantially, and no doubt by the same officers, and the proceeds were traced into the Treasury.

These circumstances tend strongly to make out the requisite *prima facie* proof requisite to induce Congress to pass this bill authorizing similar relief of these heirs of M. Austin. It will be seen at page 34 of said Executive Document 189, that the total amount so recovered under the act of 12th March, 1863, in cases like that covered by the present bill, up to the 30th June, 1868, was $9,545,293.82.

V. It will be seen by the same Executive Document 189, pages 35 and 36, that claims for proceeds of cotton, substantially similar to those embraced in the said list C, except that the capture must have been subsequent to the 30th June, 1865 (17 Stats., 134), were allowed and paid by the Secretary of the Treasury up to June 19, 1876, to the aggregate amount of $188,168.77.

These enormous payments by the government of this trust money show how earnest and how grand have been hitherto the acts of the government in recognition and execution of that sacred trust which itself declared when it put this money into the Treasury; and in obedience to the law of nations (which protects private property *in* time of war) impressed upon these proceeds the character of a sacred trust.

The question which the pending bill presents is, in part, one which asks, will the government reverse now that policy as against these ever loyal citizens and put into its treasury these moneys, having stamped upon them this quality of "trust."

VI. Another view tending to limit the scope of this bill as a "precedent" for other payments is this: It is a private act, and requires, in order to recovery, proof of loyalty. It is a fact of historical notoriety that but few recoveries can be had under a "precedent" which requires this proof of loyalty. Under this bill nothing can be recovered unless the claimants shall have shown—

First. That the United States got and kept this property of the citizen.

Second. That the citizen was at all times loyal to his government.

Third. That such citizen has at all times prosecuted his claim with diligence.

Should it be said that under the law of the Klein case (13 Wall., 128) this private bill, requiring proof of loyalty in order to recovery, is unconstitutional as an attempt to abolish the "oblivion" resulting from executive pardon, then the reply to such suggestion is obvious. The reply is this: Congress cannot, in a general law defining either the general original or appellant jurisdiction of the courts, distinguish between a citizen entitled to the "oblivion" of executive pardon, and one who never offended.

But, on the other hand, it is perfectly competent for Congress in a private act to grant its bounty or its relief on any terms it may choose. It may say that these heirs shall not be paid unless their father was a native of this country, or unless the President shall audit and settle their claim; or unless they shall present it within twenty days; or unless they shall prove their father's constant loyalty.

VII. In concluding this paper, and this allusion to the "precedent" which the enactment of this bill would establish, we frankly admit that, if the Senate should be of opinion that, in a case where a great government has constituted itself trustee of those who were, by this act of Congress, declared to be entitled to the proceeds of captured and abandoned property (13 Wall., 138), and where such government has got such proceeds into its pocket, and where such citizen has ever been faithful to his government—so faithful that he and his children have been assassinated because of such fidelity—that there it is right and good policy and good morality for the government to keep that trust money, and to prevent the children of the deceased owner thereof to be thus deprived of their only patrimony, then the passage of this bill would be a "precedent" out of harmony with such opinions.

But we respectfully submit that it would be no more out of harmony with such a view of public right than is such view out of harmony with the law—"Thou shalt not steal."

Yours, truly,

SHELLABARGER & WILSON.

HON. GEORGE F. HOAR,
*of the Committee on Claims of the United States Senate.*

We report the accompanying substitute for said bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 660.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

MR. MAXEY, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1726.]

*The Committee on Military Affairs, to which was referred the bill (S. 1726) to restore Charles Harrod Campbell to the rank of captain in the Army, respectfully submits the following report:*

The committee respectfully submits—

1. The military history and papers annexed of said Campbell, marked Exhibit A.
2. The letter of the Secretary of War, dated 18th May, 1882, marked Exhibit B.
3. Letter of Adjutant-General, dated 17th May, 1882, marked Exhibit C.
4. Report of the Judge-Advocate-General, marked Exhibit D.
5. Proceedings of a general court-martial, marked Exhibit E.
6. Letters of General Grant, Admiral Porter, Mr. Curtis, and General Barnes, asking his restoration.

The foregoing papers are made part of this report, but being voluminous, are referred to as part hereof.

A careful examination of the papers renders it entirely clear to the committee that the bill ought not to pass; wherefore the committee recommend that the bill (S. 1726) do not pass; that the same be indefinitely postponed, and that the committee be discharged from further consideration.

In making this report the committee begs to add that the restoration to the Army of an officer dismissed by sentence of a court-martial should, in the opinion of the committee, never be done, unless there has been gross, manifest, palpable injustice. Nothing of the kind is shown in this case.

---

FORT GRANT, ARIZ., *November* 24, 1880.

SIR: I have the honor herewith to tender my resignation as an officer of the United States Army.

Very respectfully, your obedient servant,

C. H. CAMPBELL,
*Captain Sixth Cavalry,*

The ADJUTANT-GENERAL, U. S. A.,
*Washington, D. C.*

[Inclosure accompanying the above letter.]

I, Charles H. Campbell, captain Sixth Regiment United States Cavalry, do hereby solemnly pledge myself to totally abstain from the use of intoxicating liquors of all kinds during the time I shall remain in active service in the Army of the United States, nor during the time aforesaid will I use the same medicinally except when prescribed by a physician and then only in case of absolute necessity, and the aforesaid physician having been notified of this pledge.

Made and subscribed to at Fort Grant, Arizona, this 24th day of November, 1880.

C. H. CAMPBELL,
*Captain Sixth Cavalry.*

Witnesses:
STEPHEN C. MILLS,
*Second Lieutenant Twelfth Infantry.*
JOHN N. GLASS,
*Second Lieutenant Sixth Cavalry.*

[Indorsement of the President on the above letter of Captain Campbell's tendering his resignation.]

The foregoing resignation is hereby accepted.

R. B. HAYES.

FEBRUARY 15, 1881.

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EXHIBIT A.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
*Washington, May 17, 1882.*

*Statement of the military service of Charles H. Campbell, of the United States Army, compiled from the records of this office.*

VOLUNTEER RECORD.

Mustered into service as first lieutenant First New York Artillery, February 4, 186[illegible].
Appointed captain and assistant adjutant-general of volunteers, June 1, 186[illegible]. (Brevetted first lieutenant of volunteers, April 9, 1865, for meritorious services during the campaign, terminating with the surrender of the insurgent army under General R. E. Lee.)

*Service.*—On the staff of General A. A. Humphreys, from February to August, 1865; assistant adjutant-general, district of Pennsylvania, to October 23, 1865, and awaiting orders until honorably mustered out, May 11, 1866.

REGULAR ARMY RECORD.

Appointed second lieutenant Sixth Cavalry, 25th July, 1866; promoted first lieutenant Sixth Cavalry, 7th May, 1867; promoted captain Sixth Cavalry, 20th September, 1874. (Brevetted first lieutenant and captain, 2d March, 1867, "for gallant and meritorious services in the battle of Petersburg, Va.")

*Service.*—On duty at Carlisle Barracks, Pennsylvania, from September 11 to October 31, 1866; conducting recruits to posts in Texas to January, 1867; in arrest January to February, 1868; with regiment in Texas to October 28, 1870; in arrest to March 8, 1871 (see General Court-Martial Orders, No. 8, Department Texas, February 7, 1871, copy herewith); with regiment in Texas to April 20, 1871, and Indian Territory and Kansas to March 9, 1872; on leave to May 31, 1872, and surgeon's certificate of disability, to September 23, 1872; with regiment in Kansas to December 16, 1873; on leave to February 18, 1874; with regiment in Kansas to July 2, 1874; on expedition in the field, Indian Territory, to December 31, 1874; at Fort Hays, Kansas, to March 19, 1875; in the field on scouting duty to May, 1875; in Arizona to July 22, 1877; in arrest and before general court-martial to August 7, 1877 (see General Court-Martial Orders, No. 18, Department Arizona, August 7, 1877, copy herewith); with regiment in Arizona to October 5, 1877; in arrest and awaiting sentence of general court-martial to February 2, 1878 (see General Court-Martial orders, No. 83, of December 27, 1877, from this office, copy herewith); with regiment in Arizona to January 27, 1880; on leave to September 15, 1880; in arrest from September 20 to October 2, 1880; commanding company at Fort Grant, Arizona, to November 1, 1880; in arrest and awaiting sentence of general court-martial until he resigned, February 15, 1881.

R. C. DRUM,
*Adjutant-General.*

[General Court-Martial Orders, No. 8.]

HEADQUARTERS DEPARTMENT OF TEXAS,
(TEXAS AND LOUISIANA),
*San Antonio, Texas, February 7, 1871.*

Before a general court-martial which convened at Fort Richardson, Texas, on Mon- December 19, 1870, pursuant to paragraph III of Special Order No. 151, head- rters Department of Texas, dated San Antonio, Tex., November 26, 1870, and of ch Maj. Robert M. Morris, Sixth United States Cavalry, is president, was arraigned tried:

First Lieut. Charles H. Campbell, Sixth United States Cavalry.

HARGE I.—"Disobedience of orders, in violation of the ninth Article of War."

*pecification 1st.*—"In this, that he, First Lieut. Charles H. Campbell, Sixth Regi- t United States Cavalry, having received a lawful order at drill from his immedi- commander and superior officer, Maj. A. K. Arnold, Sixth Regiment United States alry (he being at the time in charge of the drill), to take his place in the line of closers, he (Lieutenant Campbell) being at the time in command of a platoon, but mpetent through ignorance of his tactics to drill said platoon properly, did refuse bey said order. All this at or near Fort Richardson, Texas, on or about the 28th of October, 1870."

*pecification 2d.*—"In this, that he, First Lieut. Charles H. Campbell, Sixth Regi- t United States Cavalry, having received a lawful order at drill (a second time) n his immediate commander and superior officer, Maj. A. K. Arnold, Sixth Regi- t United States Cavalry (he being at the time in charge of the drill), to take his e in the line of file closers, he (Lieutenant Campbell) being at the time in com- d of a platoon, but incompetent through ignorance of his tactics to drill said pla- n properly, did refuse to obey said order. All this at Fort Richardson, Texas, on bout the 28th day of October, 1870."

*pecification 3d.*—"In this, that he, First Lieut. Charles H. Campbell, Sixth Regi- t United States Cavalry, having received a lawful order at drill from his imme- te commander, Maj. A. K. Arnold, Sixth Regiment United States Cavalry (he ng at the time in charge of the drill), to go to his quarters in arrest, did disobey l order for his arrest, and did reply, 'I will go to my quarters but will not obey r arrest.' All this at or near Fort Richardson, Texas, on or about the 28th day of ober, 1870."

*pecification 4th.*—"In this, that he, First Lieut. Charles H. Campbell, Sixth Regi- t United States Cavalry, having received a lawful order at drill from his imme- te commander, Maj. A. K. Arnold, Sixth Regiment United States Cavalry (he being he time in charge of the drill), to go to his quarters in arrest (this being the second e he received said order), did refuse to obey said order for his arrest, and did y, 'I will go to my quarters but I will not consider myself under arrest; you have right to arrest me; the adjutant is the person who does that,' or words to that ct. All this at or near Fort Richardson, Texas, on or about the 28th day of October, ."

HARGE II.—"Insubordinate conduct, to the prejudice of good order and military ipline."

*pecification.*—"In this, that he, First Lieut. Charles H. Campbell, Sixth Regiment ted States Cavalry, having been repeatedly ordered by his superior and commanding er, Maj. A. K. Arnold, Sixth Regiment United States Cavalry, to take his place in of file closers (he, Major Arnold, being in the execution of his duty), did repeatedly se to obey said order, and did thus act in an insubordinate manner in the presence nlisted men, to the prejudice of good order and military discipline. All this at or r Fort Richardson, Texas, on or about the 28th of October, 1870."

o which charges and specifications the accused, First Lieut. Charles H. Campbell, h United States Cavalry, pleaded "Not Guilty."

## FINDING.

he court, having maturely considered the evidence a lduced, finds the accused:

f the first specification, first charge, "Guilty."
f the second specification, first charge, "Guilty."
f the third specification, first charge, "Guilty."
f the fourth specification, first charge, "Guilty."
f the first charge, "Guilty."
f the specification, second charge, "Guilty."
f the second charge, "Guilty."

## SENTENCE.

nd the court does therefore sentence him, First Lieut. Charles H. Campbell, Sixth ted States Cavalry, "to be reprimanded in General Orders by the department mander."

The court is thus lenient on account of the evident misapprehension on the part of the accused as to the legality of the orders given by the officer in charge of the drill.

II. In the foregoing case of First Lieut. Charles H. Campbell, Sixth United States Cavalry, the mildness of the sentence is apparent on the face of the specifications, and the department commander is unable to see any adequate reason for the great leniency shown by the court. There could be no question in the mind of an officer of any experience whatever as to the legality of Major Arnold's orders, or his right to place Lieutenant Campbell in arrest, and the pretext of the accused that these orders were of doubtful legality does not redound much to his credit as a well-informed and sagacious officer.

The proceedings, findings, and sentence are approved. Lieutenant Campbell will be released from arrest and resume his sword.

By command of Col. J. J. REYNOLDS:

H. CLAY WOOD,
*Assistant Adjutant-General.*

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[General Orders, No. 18.]

General court-martial at Prescott, Ariz.

Case tried: Capt. CHARLES H. CAMPBELL, Sixth Cavalry.

HEADQUARTERS DEPARTMENT OF ARIZONA,
*Prescott, August 7, 1877.*

I. Before a general court-martial, of which Maj. Rodney Smith, paymaster, U. S. A., is president, which convened at these headquarters on the 25th day of July, 1877, by virtue of paragraph 2, Special Orders No. 72, current series, from these headquarters, was arraigned and tried:

1. Capt. Charles H. Campbell, Sixth Cavalry.

CHARGE.—"Conduct unbecoming an officer and gentleman, in violation of the sixty-first Article of War. (New.)"

*Specification.*—"In this, that Capt. C. H. Campbell, Sixth United States Cavalry, did write the following letter to Capt W. S. Worth, Eighth Infantry, relative to his (Captain Worth) official acts as commanding officer, commanding Camp Apache, Arizona, to wit:

"'CAMP VERDE, ARIZONA, *June* 19, 1877.

"'Major W. S. WORTH:

"'SIR: I have been informed of the manner in which you have acted towards one of my laundresses, left at Camp Apache, because I had not sufficient transportation to bring her with me.

"'Under different circumstances I should endeavor to have you tried by court-martial for your conduct.

"'I have long since known that you were devoid of all honor, but (until I heard of your late action) I did not think all gentlemanly instincts had left you.

"'The vindictive feelings you have towards me, but dare not exhibit in my presence, you vent upon a poor old woman.

"'Your conduct is low and dirty, and I consider you an unfit associate for gentlemen.

"'C. H. CAMPBELL.'

"This on or about the 19th day of June, 1877, at Camp Verde, Arizona."

ADDITIONAL CHARGE.—"Conduct unbecoming an officer and gentleman."

*Specification first.*—"In this, that he, Capt. Charles H. Campbell, Sixth United States Cavalry, did appropriate to his own use the sum of $70 company fund, belonging to Company A, Sixth United States Cavalry. This at Camp Apache, Arizona, between July 15 and September 30, 1875."

*Specification second.*—"In this, that he, Capt. C. H. Campbell, Sixth United States Cavalry, when called upon by Maj. James Biddle, Sixth United States Cavalry, acting assistant inspector general, Department of Arizona, in his official capacity as inspector, for a statement of company funds on hand, did officially present to said inspector, maj. James Biddle, Sixth United States Cavalry, the accounts of his (Capt. Charles H. Campbell) company fund of Company A, Sixth United States Cavalry, showing a balance of $72.57 as being on hand for the second quarter ending June 30, 1876, which statement was false. He, the said Capt. Charles H. Campbell, Sixth United States Cavalry, having appropriated the said company fund to his own use. This at Camp Apache, Arizona, on or about July 4, 1876."

*Specification third.*—"In this, that he, Capt. Charles H. Campbell, Sixth United States Cavalry, when called upon for a statement of his company-fund account did

present the following statement to Maj. James Biddle, Sixth United States Cavalry, acting assistant inspector-general, Department of Arizona, while acting in his official capacity as inspector, viz:

"'CAMP APACHE, ARIZONA, *July* 5, 1876.

"'Total amount of company fund on hand in possession of Capt. Charles H. Campbell, Sixth United States Cavalry, commanding Company A, $72.57.'

"The said statement being false and intended to deceive, in that the amount therein carried on as accruing, viz, $72.57, during the period of the second quarter of 1876, was not on hand, but was appropriated by the said Capt. Charles H. Campbell, Sixth United States Cavalry, to his own use. This at Camp Apache, Arizona, on or about July 5, 1876."

PLEA.

To the specification, 1st charge, "Guilty."
To the 1st charge, "Not Guilty."
To the 1st specification, additional charge, "Not Guilty."
To the 2d specification, additional charge, "In bar of trial." Not sustained by the court. Whereupon the accused pleaded "Not Guilty."
To the 3d specification, additional charge, "Not Guilty."
To the additional charge, "Not Guilty."

FINDINGS.

Of the specification, 1st charge, "Guilty."
Of the 1st charge, "Not Guilty," but "Guilty" of conduct prejudicial to good order and military discipline.
Of the 1st specification, additional charge, "Not Guilty."
Of the 2d specification, additional charge, "Not Guilty."
Of the 3d specification, additional charge, "Not Guilty."
Of the additional charge, "Not Guilty."

SENTENCE.—"To be reprimanded in orders by the reviewing authority."

The proceedings in the foregoing case of Capt. Charles H. Campbell, Sixth Cavalry, having been thoroughly examined, the following are the orders in the case:

No evidence having been submitted by the accused in mitigation of the specification to the first charge, to which he plead guilty, the court has virtually ruled that the specification does not sustain the charge. The plea of guilty to the specification was manifestly made to forestall investigation. Had the court called for witnesses and obtained evidence of some provocation to influence the modification of the charge, there might have been some justification for such a finding.

It is impossible to understand how a court-martial could take so lenient a view of such an offense against military propriety. Let it pass into a precedent that an officer can write such letters to a late commanding officer, with no heavier penalty than a reprimand, then all who think they have a grievance—and think it revenge to insult and call names—will await a change of station to avail themselves of it, for there could be no restraining influence in a reprimand to a mind that had no higher sense of redress than to write such a communication; for their official acts commanding officers would be subjected to abuse and insult from non-appreciative subordinates as soon as the latter were beyond their control; and official courtesy and respect for authority would cease to exist in the Army.

Had the court found the accused guiity of the specifications to the additional charge and attached no criminality thereto, the findings would at least have been consistent with the evidence, whatever view might be taken of the court's judgment of the offense.

A court may entertain its own view of the nature and degree of the charges, but it it is sworn to "well and truly try and determine according to evidence." How the court could find him not guilty of these specifications cannot be ascertained by reading the testimony. The evidence is very clear and goes to show that, at the time the accused borrowed $70 to buy pigs for his company, he should have had $68.29 company fund on hand, in the third quarter of 1875. On the 15th of July he charged six hogs on his company-fund account, which is the first entry for the quarter.

The money borrowed for this purpose was not paid until after the charges were preferred—two years after the transaction.

One year after, it is in evidence, he obtained $70 from a fellow officer to present to the acting assistant inspector-general as his company fund, which was returned after serving this purpose.

The acting assistant inspector-general who investigated the accused is very positive as to the confession of the accused, and the testimony of a fellow officer shows that he (the accused) was furnished the money to present to the inspector. No evidence is produced by the accused to disprove the main fact that he did not have his company-

fund balance on hand when it was wanted for the use of the company, or when required to produce it by the inspecting officer. The submission of his returns to show that he had accounted for all of his company fund, is no proof to the contrary in face of the evidence that he did not have the money when it was required.

A careless administration of the company fund may be frequent with officers commanding companies, but it cannot be recognized as right, and if an officer is arraigned he must expect to be held to as strict an accountability for this fund as for any other. The fact that the fund is generally small, and officers as a rule believed to be above such petty embezzlement, may be considered in case of doubt, or where the officer is in good standing, but when the fact is found that he cannot produce the fund when required, he should be held as strictly accountable as if the fund were large; an officer who cannot manage a small fund has no business in a service where he may at any time be required to manage a large one. The accounts of the accused are notoriously in a bad state, and it is in evidence that he is receiving only a fraction of his salary in consequence of stoppages, an experience which should have protected him against such accusations.

The proceedings are approved, the findings and sentence are disapproved. Captain Campbell will be released from arrest and restored to duty.

II. The general court-martial, of which Maj. Rodney Smith, paymaster, U. S. A., is president, is dissolved.

By command of August V. Kautz, colonel Eighth Infantry, brevet major-general (assigned).

J. P. MARTIN,
*Assistant Adjutant-General.*

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[General Court-Martial Orders, No. 83.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
*Washington, December 27*, 1877.

I. Before a general court-martial, which convened at Prescott, Ariz., October 12, 1877, pursuant to Special Orders, No. 108, headquarters Department of Arizona, Prescott, September 25, 1877, and of which Surgeon James C. McKee, U. S. Army, is president, was arraigned and tried—

Capt. Charles H. Campbell, Sixth Cavalry.

CHARGE I.—"Violation of the 60th Article of War."

*Specification* 1st.—"In that Capt. Charles H. Campbell, Sixth United States Cavalry, did appropriate and unlawfully apply to his own use and benefit the following articles of clothing, the property of the United States, furnished for the military service thereof, on or about the dates prefixed to the respective articles:

| | Value. |
|---|---|
| September 29, 1875, one forage cap | $0 76 |
| October 22, 1875, four pair drawers | 2 64 |
| November 11, 1875, one great coat, mounted | 6 44 |
| November 11, 1875, five pairs gloves | 80 |
| June 27, 1876, one pair trousers, unmade | 5 50 |
| June 27, 1876, four pairs drawers | 2 60 |
| October 4, 1876, one pair trousers, mounted, unmade | 4 82 |
| October 4, 1876, one pair sergeant's stripes | 26 |
| October 15, 1876, one poncho | 2 63 |
| December 20, 1876, one pair brass-screwed boots | 3 28 |
| January 10, 1877, four pairs drawers | 2 60 |
| January 11, 1877, two sergeant's stripes | 52 |
| March 16, 1877, five pairs gloves | 75 |
| March 16, 1877, three woolen blankets | 11 94 |
| June 9, 1877, four stable frocks | 3 72 |

"This near Fort Lyon, Colo., at Camp Apache, Ariz., and Camp Verde, Ariz., between September 29, 1875, and June 9, 1877."

*Specification* 2d.—"In that Capt. Charles H. Campbell, Sixth Cavalry, having received from Lieut. E. C. Hentig, Sixth Cavalry, the sum of $27.82, more or less, in payment for clothing belonging to Company A, Sixth Cavalry, and which the said Lieutenant Hentig had used, did fail, and still fails, to render to the United States any account or return of said money, but has appropriated it to his own use and benefit. This at Camp Apache, Ariz., on or about the 8th day of October, 1876, and up to the present date, September 13, 1877."

CHARGE II.—"Violation of the 8th Article of War."

*Specification* 1st.—"In that Capt. Charles H. Campbell, Sixth United States Cavalry, did knowingly make to the Quartermaster-General, U. S. Army, a false return of the clothing of the company under his command, said return being false in that one old pattern blouse; four pairs brass-screwed boots; nine compaign hats; one pair trousers, made; three pairs trousers, unmade; seventeen pairs drawers; one forage cap; one great coat, mounted; ten pairs gloves; one pair trousers, mounted, unmade; five sergeant stripes; one poncho; and five woolen blankets, reported by him (the said Captain Campbell) as being 'on hand,' were not on hand as reported in his return, but had been appropriated by him, the said Captain Campbell, to his own use and benefit. This at Camp Apache, Ariz., on or about the 31st day of March, 1877."

*Specification* 2d—"In that Capt. Charles H. Campbell, Sixth United States Cavalry, did knowingly make, to the Chief of Ordnance, U. S. Army, a false return of the arms of the company under his command, said return being false in that one Springfield carbine, cal. .45, and nine Colt's revolvers, cal. .45, reported by him, the said Captain Campbell, as being 'on hand,' were not on hand as reported in his return, but had been unlawfully disposed of by him, the said Captain Campbell. This at Camp Apache, Ariz., on or about the 31st day of March, 1877."

CHARGE III.—"Conduct unbecoming an officer and a gentleman, in violation of the Sixty-first Article of War."

*Specification* 1st.—"In that Capt. Charles H. Campbell, Sixth United States Cavalry, did appropriate to his own use and benefit the sum of $36.67, company fund, belonging to Company A, Sixth Cavalry. This at Camp Verde, Arizona, between the 6th day of June, 1877, and the 21st day of July, 1877."

*Specification* 2d.—"In that Capt. Charles H. Campbell, Sixth Cavalry, did make in the company-fund account book of Company A, Sixth Cavalry, an official record book of said company, a return of the company's fund account, in the following words and figures, to wit:

*Company-fund account of Company A, Sixth Cavalry, for part of third quarter*, 1877.

| | | | | | |
|---|---|---|---|---|---|
| June 30 | Balance on hand. | $69.47 | July 6 | 50 pounds beef, @ 10 cents | $5 00 |
| | | | July 20 | 40 plates, @ 50 cents | 20 00 |
| | | | July 20 | 40 cups and saucers, @ $5 per dozen | 16 67 |
| | | | July 21 | Transferred to Lieut. A. Henely, Sixth Cavalry | 27 80 |

I certify that the above acccount is correct.

C. H. CAMPBELL,
*Captain Sixth Cavalry, Commanding Company A.*

which return was false, in that $36.67 alleged to have been paid by him (the said Captain Campbell) for plates, cups, and saucers, had not been expended, but had been appropriated by him (the said Captain Campbell) to his own use and benefit. This at Camp Verde, Arizona, on or about the 21st day of July, 1877."

*Specification* 3d.—"In that Capt. Charles H. Campbell, Sixth Cavalry, while being tried by a general court-martial, in session at Prescott, Ariz., did submit in his defense, before said court, the following account, in words and figures, to wit:

*Company-fund account of Company A, Sixth Cavalry, for part of third quarter*, 1877.

| | | | | | |
|---|---|---|---|---|---|
| June 30 | Balance on hand: | $69.47 | July 6 | 50 pounds beef, @ 10 cents | $5 00 |
| | | | July 20 | 40 plates, @ 50 cents | 20 00 |
| | | | July 20 | 40 cups and saucers, @ $5 per dozen | 16 67 |
| | | | July 21 | Transferred to Lieut. A. Henely, Sixth Cavalry | 27 80 |

I certify that the above account is correct.

C. H. CAMPBELL,
*Captain Sixth Cavalry, Commanding Company A.*

which account was false. This at Prescott, Ariz., between the 25th day of July, 1877, and the 3d day of August, 1877."

*Specification* 4th.—"In this, that Capt. Charles H. Campbell, Sixth Cavalry, while being tried by a general court-martial, in session at Prescott, Ariz., did submit in his defense, before said court, the following affidavit, in words and figures, to wit:

"'TERRITORY OF ARIZONA,
"'*County of Yavapai, L. S.:*

"'Before me, the undersigned, a notary public in and for the county and territory aforesaid, personally appeared Capt. C. H. Campbell, Sixth United States Cavalry,

; duly sworn, deposes and says that he did not admit to Maj. James Biddle, alry, at any time or in any place, that he had presented borrowed money th intent to deceive him, and that he has not, since he has been in command any, ever received one cent of company funds for which he has not properly .

"'C. H. CAMPBELL,
"'*Captain Sixth Cavalry.*

n and subscribed before me this 1st day of August, 1877.
"'JAMES GOUGH,
"'*Notary Public.*'

davit, sworn to and subscribed by the said Captain Campbell, before the s Gough, notary public, at the time and place above mentioned, was false. escott, Ariz., between the 25th day of July, 1877, and the 3d day of August,

NAL CHARGE I.—"Conduct unbecoming an officer and a gentleman, in vio- he Sixty-first Article of War."

*tion 1st.*—"In that Capt. Charles H. Campbell, Sixth United States Cavalry, and forward to the Quartermaster-General, U. S. Army, Washington, D. C., ing letter, in words and figures, to wit:

"'CAMP VERDE, ARIZONA, *August* 18, 1877.

QUARTERMASTER GENERAL,
"'*United States Army, Washington, D. C.:*

I have the honor to inclose herewith quarterly return of quartermaster taining to Company A, Sixth United States Cavalry, for the second quar- My return is rendered at so late a date owing to the tardiness and neglect . I. G. of this department, from whom I have been unable to procure, until certain inventories necessary to complete my papers.

"'C. H. CAMPBELL,
"'*Captain, Sixth Cavalry, Commanding Company A,*'

ter was false, in that it was not owing "to the tardiness and neglect" of assistant inspector-general of the Department of Arizona that his returns ered at so late a date. This at Camp Verde, Ariz., on August 18, 1877."

*tion 2d.*—"In that Capt. Charles H. Campbell, Sixth United States Cav- write and forward to the Quartermaster-General, U. S. Army, Washington, following letter, in words and figures, to wit:

"'CAMP VERDE, ARIZ., *August* 18, 1877.

QUARTERMASTER-GENERAL,
"'*United States Army, Washington, D. C.:*

I have the honor to inclose herewith quarterly return of quartermaster stores, to Company A, Sixth Cavalry, for the second quarter, 1877. My return is t so late a date owing to the tardiness and neglect of the acting assistant general of this department, from whom I have been unable to procure, until certain inventories necessary to complete my papers.

"'C. H. CAMPBELL,
"'*Captain, Sixth Cavalry, Commanding Company A,*'

ter did unwarrantedly and unjustly reflect upon his superior officer, Maj. ldle, Sixth United States Cavalry, acting assistant inspector-general, De- of Arizona, because it was not owing 'to the tardiness and neglect' of the istant inspector-general of the Department of Arizona that 'certain invent- e not received by him (the said Capt. Charles H. Campbell) in time to com- eturns. This at Camp Verde, Arizona, on August 18, 1877."

NAL CHARGE II.—"Violation of the Sixtieth Article of War."

*tion.*—"In that Capt. Charles H. Campbell, Sixth United States Cavalry, did riate one Colt's revolver, caliber .45, the property of the United States, and Capt. Charles H. Campbell, Sixth United States Cavalry, was responsible, ve the said Colt's revolver to P. S. O'Kelly, a civilian employed by the quar- department at Camp Apache, Arizona. This at Camp Apache, Arizona, on May 11, 1877."

h charges and specifications the accused, Capt. Charles H. Campbell, Sixth leaded as follows:

CHARGE I.

"

CHARGE II.

To the 1st specification, "Not Guilty."
To the 2d specification, "Not Guilty."
To the charge, "Not Guilty."

CHARGE III.

To the 1st specification, "Not Guilty."
To the 2d specification, "Not Guilty."
To the 3d specification, "Not Guilty."
To the 4th specification, "Guilty, except so much thereof as alleges said 'affidavit was false,' and of the excepted words Not Guilty."
To the Charge, "Not Guilty."

ADDITIONAL CHARGE I.

To the 1st specification, "Guilty, except so much thereof as states 'which letter was false, in that it was not owing to the tardiness and neglect of the acting assistant inspector-general of the Department of Arizona that his returns were rendered at so late a date,' and of the excepted wor. s Not Guilty."
To the 2d specification, "Guilty, except so much thereof as states 'which letter did unwarrantedly and unjustly reflect upon his superior officer, Maj. James Biddle, Sixth United States Cavalry, acting assistant inspector-general Department of Arizona because it was not owing to the tardiness and neglect of the acting assistant inspector-general of the Department of Arizona that certain inventories were not received by him (the said Capt. Charles H. Campbell) in time to complete his returns,' and of the excepted words Not Guilty."
To the charge, "Not Guilty."

ADDITIONAL CHARGE II.

To the specification, "Not Guilty."
To the charge, "Not Guilty."

FINDING.

The court, having maturely considered the evidence adduced, finds the accused, Capt. Charles H. Campbell, Sixth Cavalry, as follows:

CHARGE I.

Of the 1st specification, "Guilty."
Of the 2d specification, "Guilty."
Of the charge, "Guilty."

CHARGE II.

Of the 1st specification, "Guilty."
Of the 2d specification, "Guilty, except the words, 'but had been unlawfully disposed of by him, the said Captain Campbell,' and of the excepted words Not Guilty."
Of the charge, "Not Guilty, but Guilty of conduct to the prejudice of good order and military discipline."

CHARGE III.

Of the 1st specification, "Not Guilty."
Of the 2d specification, "Not Guilty."
Of the 3d specification, "Not Guilty."
Of the 4th specification, "Not Guilty."
Of the charge, "Not Guilty."

ADDITIONAL CHARGE I.

Of the 1st specification, "Guilty."
Of the 2d specification. "Guilty."
Of the charge, "Guilty."

ADDITIONAL CHARGE II.

Of the specification, "Guilty."
Of the charge, "Guilty."

SENTENCE.

And the court does therefore sentence him, Capt. Charles H. Campbell, Sixth Cavalry, "To be dismissed the service of the United States."

II. The record of the proceedings of the general court-martial in the foregoing case of Capt. Charles A. Campbell, Sixth Cavalry, having been forwarded to the Secretary

of War and by him submitted to the President of the United States for his action, the following are his orders thereon, viz:

EXECUTIVE MANSION, *December* 26, 1877.

The foregoing findings and sentence in the case of Capt. Charles H. Campbell, Sixth Cavalry, are disapproved and set aside.

R. B. HAYES.

By command of General Sherman:

E. D. TOWNSEND,
*Adjutant-General.*

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EXHIBIT B.

WAR DEPARTMENT,
*Washington City, May* 18, 1882.

SIR: In reply to your communication of the 26th ultimo, transmitting Senate bill 1726, to restore Charles H. Campbell to the rank of captain in the Sixth Cavalry, United States Army, for such report as may aid the committee in its conclusions, and such suggestions as to the effect of restorations upon the service, as I may deem proper to make, I have the honor to inclose a report of the Adjutant-General of the Army, bearing date the 17th instant, accompanied by a transcript of the record of the court-martial proceedings which resulted in Captain Campbell's resignation, with the report thereon of the Judge-Advocate-General, and a copy of the resignation of Captain Campbell; also a statement of his military services. I return also the commendatory letters inclosed by you.

The record of the last court-martial proceeding, in consequence of which Captain Campbell tendered his resignation, shows, in my opinion, that he was entirely unfit to hold any commission in the Army, and especially that of a captain directly responsible for the safety, discipline, and welfare of his company.

The records of previous courts-martial, the general orders relating to which are inclosed by the Adjutant-General, indicate, if they do not show clearly, a general unfitness in Captain Campbell as an officer of the Army.

I do not overlook the letters from strong and influential friends of Captain Campbell and his family, inclosed in your letter, and if the position of captain in the Army had no responsibilities and could be bestowed as an act of kindness or charity without injustice to others, and harm to the public service, I would not feel called upon to recommend unfavorable consideration of the bill.

The evil of intemperance in the Army is great. The friendly feeling of his brother officers which shelters an intemperate officer until all his Army friends consider him past redemption, is well known. When he has gone so far as to be brought before a court-martial, and the sentence has been confirmed in spite of the remonstrances of friends at Washington, I think for the welfare and discipline of the Army that the offender's military career should be considered closed.

As to the effect upon the service of restorations by special acts, I can add nothing of value to what the Adjutant-General has said in his inclosed report, to which I invite your special attention. I concur entirely in his views.

I have the honor to be, very respectfully, your obedient servant,

ROBT. T. LINCOLN,
*Secretary of War.*

Hon. S. B. MAXEY,
*Of Committee on Military Affairs, U. S. Senate.*

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EXHIBIT C.

ADJUTANT-GENERAL'S OFFICE,
*May* 17, 1882.

SIR: I have the honor to return herewith Senate bill 1726, "to restore Charles Harrod Campbell to the rank of captain in the Army," and the accompanying papers, which were referred to the Secretary of War by Hon. S. B. Maxey, of the Senate Committee on Military Affairs, for report and "suggestions as to the effect of restorations upon the service," &c. I inclose a statement of the military service of Captain Campbell, and copies of the court-martial orders, referred to therein, and also copy of the record of his last trial by court-martial, in November, 1880, and of the report of the Judge-Advocate-General thereon, and of Captain Campbell's tender of resignation and its acceptance. It will be seen from these papers that his resignation was tendered and accepted after he had been tried, and sentenced to be dismissed.

The effect of restoring officers of the Army by special legislation has frequently been characterized by the department as extremely hurtful and injurious to the service, and the Adjutant-General is impelled to express his entire concurrence in this view. When an officer has been tried by court-martial, and sentenced to be cashiered or dismissed from the service, and the sentence has been approved and given effect by the proper authority, he must be held to have justly forfeited his commission. He is tried by his peers, and may appeal to the Secretary of War, and finally to the President, and is not likely to be denied any consideration which his case merits. The restoration of officers who, by their own misconduct, or voluntary acts, have forfeited or relinquished their position in the Army, involves, in most cases, vacancies to which officers who have *not* forfeited their commissions are, by law and of right, entitled to be promoted. Such restorations tend to lower the regard and respect of the Army for military regulations and law, and to destroy, in a great measure, the incentives for officers to render creditable and efficient service, and to maintain unstained records.

Very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General.*

The honorable SECRETARY OF WAR.

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EXHIBIT D.

WAR DEPARTMENT,
BUREAU OF MILITARY JUSTICE,
*February* 3, 1881.

SIR: The record of the trial of Capt. C. H. Campbell, Sixth Cavalry, is respectfully submitted with the following report:

Captain Campbell was tried by general court-martial at Fort Grant, Ariz., on the 18th of November last, under the following charges:

I.—Drunkenness on duty.

Six specifications are laid under this charge, alleging successively that accused was drunk when reporting for duty to his commanding officer, Major Arnold, on the morning of September 17 last; drunk when marching out of camp on the 19th September; drunk on the same day while in temporary command of the second battalion of troops in the field; so drunk as to be unfit and unable to present himself at headquarters at officers' call; and drunk on the following morning, September 20, in the presence of his commanding officer, during an examination of witnesses as to his conduct on the preceding day.

II.—Conduct to the prejudice of good order and military discipline.

The ten specifications under this charge allege the drunken vomiting of accused in the tent of Lieutenant Toucy, and in the presence of other officers, on the 17th of September; his vomiting and drunkenness in his own tent on the same day; his drunkenness at the trader's store, in the presence of other officers, on the 18th of September; his continued drunkenness on the same day; his leaving his company while on the parade ground, on the 19th of September, and drinking from a bottle behind the officers' quarters; his publicly and repeatedly drinking from a bottle on the 19th of September, while on the march and in command; his renewed and disorderly drunkenness on the 20th September while in arrest and on his way from the field to Camp Bowie, and his persistent neglect of all his duties as company commander on the 17th, 18th, 19th, and 20th days of September last.

An additional charge alleges the drunkenness of the accused on the 1st of November last, while officer of the day.

The accused pleaded guilty and tendered to the court a pledge of total abstinence and a resignation of his commission, the latter to be sent forward in case of said pledge being violated.

The court find accused guilty under every specification and charge, and sentence him to be dismissed the service.

General Willcox, department commander, submits the proceedings for the President's action, and recommends the execution of the sentence, inasmuch as it will be seen from the papers, herewith accompanying the record, that Captain Campbell has already violated the pledge submitted with his final plea.

The resignation tendered by the accused at his trial, and which is unconditional, is appended to the record, as is also the pledge of abstinence given by him, which is in the following words:

"I, Charles H. Campbell, captain Sixth Regiment United States Cavalry, do hereby solemnly pledge myself to totally abstain from the use of intoxicating liquors of all kinds during the time I shall remain in active service in the Army of the United

States. Nor during the time aforesaid will I use the same medicinally, except when prescribed by a physician, and then only in a case of absolute necessity, and the aforesaid physician having been notified of this pledge.

"Made and subscribed to at Fort Grant, Arizona, this 18th day of November, 1880."

By the tender of the foregoing pledge and resignation by the accused, four members of the court and Major Egbert, the judge-advocate, were led to sign a recommendation for a favorable consideration of his case. A later paper signed by all the members of the court is found with the record, in which occurs the following statement: "It has since come to the knowledge of all the members of the court that Captain Campbell has, since he submitted his pledge to the court, drank intoxicating liquors, and for that reason the recommendation above referred to has been withdrawn by the members who signed it." This statement, it is seen from the opening clause, is made by the court, "for the information of the reviewing authority."

A letter to the assistant adjutant-general, Department of Arizona, from Maj. A. K. Arnold, Sixth Cavalry, commanding Fort Grant, also accompanies the record. In it Major Arnold writes:

"I desire to withdraw my recommendation made to the commanding general in telegram in the case of Captain Campbell. Captain Campbell has already violated his pledge, it having been reported to me that on the evening of the 20th November, two days after taking his pledge, and immediately after his trial, he was drunk, said drunkenness being the result of drinking intoxicating liquors. I inclose copies of correspondence on this subject (marked A, B, C, D, and E), which fully substantiate the report."

The correspondence referred to consists of letters of Major Arnold to the accused and the latter's replies. In these Captain Campbell acknowledges intoxication subsequently to tendering his pledge, and states that it was chiefly due to large doses of bromide of potassium; and on being informed that the explanation was unsatisfactory, admits having drunk liquor, and claims that he "considered his pledge as taking effect from the time when action should be taken upon his case by the proper authority."

Upon this record, this bureau can but advise that the sentence is fully justified by fact and law, and that the interests of the service call for its confirmation. It may be noted in this connection that Captain Campbell has heretofore (in October, 1877) been dismissed the service by the sentence of a general court-martial, the proceedings of which were, however, not approved by the President. (See General Court-Martial Order 83, Headquarters of Army, 1877; also proceedings on a previous trial in General Order 18, Department of Arizona, 1877.)

W. WINTHROP,
*Acting Judge-Advocate-General.*

Hon. ALEXANDER RAMSEY,
*Secretary of War.*

Official copy:

D. G. SWAIM,
*Judge-Advocate-General.*

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## CASE 1.—DAY 1.

***Proceedings of a general court-martial, convened at Fort Grant, A. T., by virtue of the following orders:***

[Special Orders, No. 142.]

HEADQUARTERS DEPARTMENT OF ARIZONA,
*Whipple Barracks, Prescott, November* 3, 1880.

Extract.]

I. A general court-martial is hereby appointed to meet at Fort Grant, A. T., at 10 o'clock a. m., on Tuesday, the 16th day of November, 1880, or as soon thereafter as practicable, for the trial of Captain C. H. Campbell, Sixth Cavalry, and such other persons as may be properly brought before it.

DETAIL FOR THE COURT.

1. Lieutenant-Colonel R. L. La Motte, Twelfth Infantry.
2. Surgeon Andrew K. Smith, U. S. Army.

3. Captain G. M. Brayton, Eighth Infantry.
4. Captain A. T. Smith, Eighth Infantry.
5. Captain C. B. McLellan, Sixth Cavalry.
6. Captain S. M. Whitside, Sixth Cavalry.
7. Captain E. F. Thompson, Twelfth Infantry.
8. Captain A. R. Chaffee, Sixth Cavalry.
9. Captain Adam Kramer, Sixth Cavalry.

Captain Harry C. Egbert, Twelfth Infantry, judge-advocate.

No other officers than those named can be assembled without manifest injury to the service.

* * * * * * *

By command of O. B. Willcox, major-general (by assignment).

FRED. A. SMITH,
*First Lieutenant and Adjutant, Twelfth Infantry,*
*Acting Assistant Adjutant-General.*

[Special Orders, No. 148.]

HEADQUARTERS DEPARTMENT OF ARIZONA,
*Whipple Barracks, Prescott, November* 12, 1880.

[Extract.]

I. The general court-martial appointed to meet at Fort Grant, A. T., by virtue of paragraph 1, Special Orders No. 142, current series, from these headquarters, is authorized to sit without regard to hours.

* * * * * * *

By command of O. B. Willcox, major-general (by assignment).

FRED. A. SMITH,
*First Lieutenant and Adjutant, Twelfth Infantry,*
*Acting Assistant Adjutant-General.*

FORT GRANT, A. T., *Nov.* 16*th*, 1880—10 *o'clock a. m.*

The court met pursuant to the foregoing orders. Present:

1. Lieutenant-Colonel R. S. La Motte, Twelfth Inf'y.
2. Surgeon Andrew K. Smith, U. S. Army.
3. Captain G. M. Brayton, Eighth Infantry.
4. Captain A. T. Smith, Eighth Infantry.
5. Captain C. B. McLellan, Sixth Cavalry.
6. Captain S. M. Whitside, Sixth Cavalry.
7. Captain E. F. Thompson, Twelfth Infantry.
8. Captain A. R. Chaffee, Sixth Cavalry.

Also, Captain H. C. Egbert, Twelfth Infantry, judge-advocate.

Absent: Captain Adam Kramer, Sixth Cavalry.

The judge-advocate stated to the court that authority to employ a reporter had been granted by the department headquarters, but that a copy of the authority had not yet been received.

The court then proceeded to the trial of Captain Charles H. Campbell, Sixth Cavalry, who was called into court. The judge-advocate stated to the court that the counsel for Captain Campbell not having arrived, he would suggest an adjournment until to-morrow.

The court, therefore, adjourned, to meet to-morrow morning, the 17th instant, at ten o'clock.

HARRY C. EGBERT,
*Captain Twelfth Inf'y, Judge-Advocate.*

DAY 3.

FORT GRANT, A. T., *November* 18*th*, 1880—10 *o'clock a. m.*

The court met pursuant to the foregoing orders and adjournment of the seventeenth instant. Present:

1. Lieut. Col. R. S. La Motte, Twelfth Infan'y.
2. Surgeon A. K. Smith, U. S. Army.
3. Capt. G. M. Brayton, Eighth Infantry.
4. Capt. A. T. Smith, Eighth Infantry.
5. Capt. C. B. McLellan, Sixth Cavalry.
6. Capt. S. M. Whitside, Sixth Cavalry.
7. Capt. E. F. Thompson, Twelfth Infantry.
8. Capt. A. R. Chaffee, Sixth Cavalry.
9. Capt. Adam Kramer, Sixth Cavalry.

Also, Capt. Harry C. Egbert, Twelfth Infantry, judge-advocate.

The proceedings of the previous day were read and approved. The court then proceeded with the trial of Captain C. H. Campbell, Sixth Cavalry, who appeared in court and asked permission to introduce the Hon. John Haynes, as his counsel, which request was granted.

The orders convening the court were then read to the accused, who was asked if he had any objection to any member named in the order. He replied in the negative. The members of the court were then severally duly sworn by the judge-advocate, and the judge-advocate was duly sworn by the president of the court, all of which oaths were administered in the presence of the accused.

Thomas E. Atkinson was then sworn as reporter in the presence of the accused.

The accused, Captain C. H. Campbell, Sixth Cavalry, was then duly arraigned on the following charges and specifications:

CHARGE 1.—Drunkenness on duty, in violation of the thirty-eighth Article of War.

*Specification 1st.* In this, that he, Captain Clrarles H. Campbell, Sixth U. S. Cavalry, was drunk while reporting for duty to his battalion commander, Major A. K. Arnold, Sixth U. S. Cavalry, in camp near Fort Bowie, A. T., on or about the morning of September 17, 1880.

*Specification 2d.*—In this, that he, Captain Charles H. Campbell, Sixth Cavalry, was drunk while in command of his company; when marching out of camp; when forming on the parade ground at Fort Bowie; when marching out of said post, on an expedition against hostile Indians; and when marching down the hill from said post (at that time swaying in his saddle).

All this near and at Fort Bowie, A. T., on or about September 19th, 1880.

*Specification 3d.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was drunk when in temporary command of the second battalion of the troops in the field in SE. Arizona, on the march from near Fort Bowie to camp, about eleven miles from said post, on or about September 19th, 1880.

*Specification 4th.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was drunk when in command of his company while going into camp, about eleven miles from Fort Bowie, A. T.

All this during an expedition against hostile Indians, on or about the afternoon and evening of September 19th, 1880.

*Specification 5th.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was, when officers' call sounded, unable or unfit, from drunkenness, to present himself at headquarters.

All this during an expedition against hostile Indians, on or about the afternoon and evening of September 19th, 1880.

*Specification 6th.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was drunk when sent for by, and while reporting to, his commanding officer, and while answering for his conduct during a formal examination of witnesses; this examination being conducted in his presence, and in the presence of other officers of the command, by his commanding officer, Colonel E. A. Carr, Sixth U. S. Cavalry. All this at camp in the field, about eleven miles from Fort Bowie, A. T., on or about the morning of September 20th, 1880.

CHARGE 2D. Conduct to the prejudice of good order and military discipline, in violation of the sixty-second Article of War.

*Specification 1st.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was drunk and vomiting in the tent of Lieut. Toney, Sixth U. S. Cavalry, in the presence of subaltern officers, at camp near Fort Bowie, A. T., on or about September 17th, 1880.

*Specification 2d.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was drunk and vomiting in his tent, the back of which was raised so that he was observed by subalterns. All this at camp in the field near Fort Bowie, A. T., on or about September 17th, 1880.

*Specification 3d.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was drunk at the trader's store at Fort Bowie, Arizona, in the presence of officers and civilians, on or about September 18th, 1880.

*Specification 4th.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, was drunk on his way from the trader's store at Fort Bowie, A. T., to camp near Fort Bowie, A. T., on or about the evening of September 18th, 1880, in the presence of the second lieutenant of his company.

*Specification 5th.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, did, while in command of his company, waiting on the parade ground, leave his company, go behind the officers' quarters, and drink from the mouth of a bottle.

This to the knowledge of officers and soldiers at Fort Bowie, A. T., on or about September 19th, 1880, about the time the line was forming for the march.

*Specification 6th.*—In this, that he, Captain Charles H. Campbell, Sixth U S. Cavalry, did, while on the march, and while in temporary command of the second battalion of troops in the field, in SE. Arizona, on the road, publicly and repeatedly, drink from the mouth of a bottle, generally presumed to contain intoxicating liquors,

This between Fort Bowie, A. T., and camp, about eleven miles from that post, on or about September 19th, 1880.

*Specification 7th.*—In this, that he, Captain Charles H. Campbell, while in arrest in camp, and while on his way from camp, about eleven miles from Fort Bowie, A. T., to that post, was drunk in the presence of enlisted soldiers, and gave them much trouble to take care of him.

All this on or about September 20th, 1880.

*Specification 8th.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, having reported for duty in the field, in camp near Fort Bowie, A. T., on or about the morning of the 17th of September, 1880, did not attend any stable duties or roll-calls, did not inspect his company messes, or perform any other duty on that day except to speak a few words to his orderly sergeant.

All this at or near camp in the field near Fort Bowie, A. T., on or about September 17th, 1880.

*Specification 9th.*—In this, that he, Captain Charles H. Campbell, Sixth Cavalry, being in command of his company in the field, in camp near Fort Bowie, A. T., on or about the morning of September 18th, 1880, did not attend reveille roll-call, morning stable duties, or any other duties, except to sign his morning report.

All this at or near camp in the field near Fort Bowie, A. T., on or about September 18th, 1880.

*Specification 10th.*—In this, that he, Captain Charles H. Campbell, Sixth U. S. Cavalry, being in command of his company in camp in the field, about eleven miles from Fort Bowie, A. T., on or about the afternoon of the nineteenth and the morning of the twentieth of September, 1880, did not attend afternoon stable duty, reveille roll-call, morning stable duty, or perform any duties except to sign the morning report and a memorandum of the strength of his company.

All this at or near camp of troops in the field in Southeastern Arizona, about eleven miles from Fort Bowie, A. T., on or about the 19th and 20th of September, 1880.

And the following additional charge and specification:

CHARGE. Violation of the 38th Article of War.

*Specification.*—In this, that he, Captain Charles H. Campbell, Sixth Regiment U. S. Cavalry, being on duty as officer of the day, was found drunk.

All this at or near Fort Grant, A. T., on or about the 1st day of November, 1880.

The accused through his counsel then asked for a short time to consider upon his plea. The court took a recess for this purpose until 1.30 p m.

To which charges and specifications the accused, Captain C. H. Campbell, Sixth Cavalry, pleads as follows:

To the first specification, first charge, the accused pleads in bar, and moves the court to strike out the first specification, under charge first, upon the ground that the said specification shows upon its face that accused was not on duty at the time covered by the specification, the language being, "while reporting for duty."

To which the judge-advocate replies that the accused was on duty as soon as he commenced the act of reporting for duty to his commanding officer.

The accused replies to the point of the judge-advocate that reporting for duty implies, necessarily, that he was not on duty prior to the time he reported; whether he was thereafter on duty would depend upon the order of his superior to whom he reported. If such superior should not assign him to duty, he would not be on duty.

It has been held that the mere fact that the accused is an officer, and so liable to be ordered to duty, is not thereby necessarily on duty, as in case of absence on leave or the like.

The language of the article is on guard, party, or other duty, signifying some specific duty, in distinction from the general duty of a soldier, or the liability to be ordered to special duty.

The judge-advocate replies that the act of reporting for duty was an act of military duty.

Should the commanding officer decline to assign the officer to any duty, specific or general, his status would then change, but this was not the fact in this case.

To the second specification, first charge: "Not Guilty."

To the third specification, first charge: "Not Guilty."

To the fourth specification, first charge: "Not Guilty."

To the fifth specification, first charge: "Not Guilty."

To the sixth specification, first charge: "Not Guilty."

To the first charge: "Not Guilty."

To the first specification, second charge, the accused pleads in bar, and moves the court to strike out the first specification under the second charge, upon the ground that the same does not state any offense under the sixty-second article of war, nor under any article of war.

Accused insists that, in the absence of enlisted men, and in the absence of a state-

ment of facts showing conduct unbecoming an officer and gentleman, that no offense against the sixty-second article, or any article of war, is stated.

To constitute an offense under the sixty-second article of war the facts stated must be such as directly tend to the prejudice of good order and military discipline. "The facts stated must prima facie be to the prejudice of good order and military discipline." (Winthrop's Digest, page 46, paragraphs 8 and 9. See also same, page 42, paragraphs 2 and 3.)

If the facts stated are consistent with the innocence of the accused under any reasonable hypothesis, no offense is stated. It might be true, for example, that the accused was drunk and was also vomiting on that occasion, and it might also be true that intoxicating liquor had been taken by him under the direction and advice of a surgeon, or for some proper purpose and in proper quantity, but the effect was exaggerated by the condition of his system or other unknown cause. Besides, the fact of vomiting is not alleged to have been produced by the liquor, but if it were it does not tend to show that the liquor was improperly taken. The place where it occurred does not make it an offense, or in any manner aggravate the circumstances, and no enlisted man is alleged to have witnessed it.

To the second specification, second charge, the accused pleads in bar of trial upon the second specification of charge second that the same does not state any offense under the sixty-second or any article of war.

In support of this plea, and his motion to strike out said specification, accused urges the same reasons stated and urged by him under the first specification of charge second.

Adding the single remark that it does not appear from the specification whether the back of his tent was raised by others, for the purpose of enabling them to act as spies upon him, or whether it, as well as the observations made, were accidental. In either case a single act of drunkenness, and sickness arising therefrom (if it did arise from it, which is not alleged), in an officer's tent, where he has a right to suppose that he will not be clandestinely observed, does not on its face or otherwise tend to the prejudice of good order or military discipline, and the specification should be stricken out.

To the third specification, second charge, the accused pleads in bar, and moves the court to strike out the same for the reason that the same does not state any offence under said sixty-second or any Article of War. The mere fact that accused was drunk at the trader's store in presence of officers and civilians, without the statement of other facts, does not show a violation of the sixty-second article. Neither in this specification, nor in the first or second, is any disorder charged or stated, and accused insists that being drunk is not an offence except in three well-defined cases:

1st. When accused is on duty.

2d. When off duty, in the presence of enlisted men, or amounts to a disorder. (See Winthrop Digest, page 18, section 9.)

3d. When off duty and attended by such behavior as may be held to be "unbecoming an officer and a gentleman."

This third specification comes within neither of these cases, and should be stricken out.

To the fourth specification, second charge, the accused pleads in bar of this specification, and moves the court to strike out the same, and in support thereof urges the reasons above specified under the first, second, and third specifications.

To the fifth specification, second charge, the accused pleads in bar of this specification, and moves the court to strike out said specification for the reason that the same does not state any offence whatever. Besides the above-stated objection, the accused urges the additional reason that this specification be stricken out that the same is ridiculous and is an effort to make this court the medium of investigating the conduct of an officer when the accuser is wholly unable to state as a fact the inference he wishes the court to draw. It would have been supremely ridiculous to present to this court a specification that the accused drank water out of a bottle, but being unable to say that he drank whiskey out of a bottle he simply specifies that he drank out of a bottle, leaving the court to speculate and guess as to what the bottle in fact contained.

To the sixth specification, second charge, the accused pleads in bar of this specification, and moves the court to strike out the same upon the same grounds and for the same reasons stated under specification fifth—adding only to his remarks, that in this the accuser alleges that the bottle was generally presumed to contain whiskey. Such charge is wholly insufficient, and besides there is no offence in drinking whiskey from a bottle. The mere fact of drinking is never an offence under military law. The effect, or the conduct resulting from the effect, is all that can be inquired into, and there is no allegation that there was any effect from the alleged drinking of the presumed whiskey.

To the seventh specification, second charge: "Not Guilty."

To the eighth specification, second charge: "Not Guilty."

To the ninth specification, second charge: "Not Guilty."

To the tenth specification, second charge: "Not Guilty."

To the second charge: "Not Guilty."
To the specification of the additional charge: "Not Guilty."
To the additional charge: "Not Guilty."
The court was then cleared and closed for deliberation, the accused and his counse retiring.
Thr court was opened, the accused and his counsel present, then the judge-advocate announced the action of the court as follows:
To the first specification, first charge, the plea in bar overruled by the court.
To the first specification, second charge, the plea in bar overruled by the court.
To the second specification, second charge, the plea in bar sustained by the court.
To the third specification, second charge, the plea in bar sustained by the court.
To the fourth specification, second charge, the plea in bar sustained by the court.
To the fifth specification, second charge, the plea in bar sustained by the court.
To the sixth specification, second charge, the plea in bar sustained by the court.
The accused then pleaded as follows:
To the first specification, first charge: "Not guilty."
To the first specification, second charge: "Not guilty."
The court then adjourned to meet at ten o'clock a. m. on the nineteenth instant.

HARRY C. EGBERT,
*Captain 12th Inf't'y, Judge-Advocate*

DAY 4.

FORT GRANT, A. T., *November* 19th, 1880—11.15 a. m.

The court met pursuant to the foregoing orders and adjournment of the eighteenth instant. Present:
1. Lt. Col. R. S. La Motte, Twelfth Infantry.
2. Surgeon Andrew K. Smith, U. S. Army.
3. Captain G. M. Brayton, Eighth Infantry.
4. Captain A. T. Smith, Eighth Infantry.
5. Captain C. B. McLellan, Sixth Cavalry.
6. Captain S. M. Whitside, Sixth Cavalry.
7. Captain E. F. Thompson, Twelfth Infantry.
8. Captain A. R. Chaffee, Sixth Cavalry.
9. Captain Adam Kramer, Sixth Cavalry.

Captain H. C. Egbert, Twelfth Infantry, judge-advocate.
The accused and his counsel also present.
The proceedings of the eighteenth instant were then read and approved. The court then took a recess until 1.30 p. m.
The court resumed case. Accused through his counsel presents to the court the following papers:
First. Copy of pledge of Captain Charles H. Campbell, appended, marked B.
Second. Copy of resignation of Capt. Charles H. Campbell, appended, marked C.
Third. Copy of letter of Captain Charles H. Campbell to Maj. A. K. Arnold, appended, marked D.
Fourth. Copy of telegram to Maj. Arnold from the acting assistant adjutant-general, appended, marked E.
By permission of the court the counsel for the accused addressed the court upon the subject of the above-mentioned papers.
The court was then cleared, the accused and his counsel retiring.
The court was opened, and the judge-advocate stated that the court had instructed him to send the following telegram:

*To the Acting Assistant Adjutant-General, Department of Arizona:*

Court directs me to send the following: Some doubt has arisen in the minds of the court which will be settled by reply to following dispatch:
Captain Campbell, through his counsel, has presented for the consideration of the court a pledge not to drink intoxicating liquors while on active list, with his resignation to be forwarded in case he violates his pledge, and a telegram to Major Arnold from the A. A. A. G., Department of Arizona, to the effect that Captain Campbell may submit the pledge and resignation to the court. No evidence has been taken in the case. Does the commanding general wish the court to make any recommendation regarding the acceptance or non-acceptance of the pledge of Captain Campbell on condition of the withdrawal of the charges before the case goes any further? Court awaits reply.

EGBERT, *Judge-Advocate.*

The court then adjourned to meet to-morrow, the twentieth instant, at 10 o'clock a. m.

HARRY C. EGBERT,
*Captain 12th Inf't'y, Judge-Advocate.*

DAY 5.

FORT GRANT, A. T., *Nov. 20th*, 1880—10 a. m.

The court met pursuant to the foregoing orders and adjournment of the nineteenth instant. Present:

1. Lt. Col. R. S. La Motte, Twelfth Infantry.
2. Surgeon Andrew K. Smith, U. S. Army.
3. Captain G. M. Brayton, Eighth Infantry.
4. Captain A. T. Smith, Eighth Infantry.
5. Captain C. B. McLellan, Sixth Cavalry.
6. Captain S. M. Whitside, Sixth Cavalry.
7. Captain E. F. Thompson, Twelfth Infantry.
8. Captain A. R. Chaffee, Sixth Cavalry.
9. Captain Adam Kramer, Sixth Cavalry.

Captain Harry C. Egbert, Twelfth Infantry, judge-advocate.
The accused and his counsel also present.
The proceedings of the nineteenth instant were then read and approved.
The judge-advocate presented to the court the following telegram:

[Whipple Barracks, 19th, 1880. Received at Fort Grant, A. T., Nov. 19, 1880.]

To H. C. EGBERT,
*J. A. G. C. M., Grant:*

Dispatch received. Before the case goes any further the commanding general wishes the court to make recommendations as regarding the acceptance or non-acceptance of the Capt. Campbell pledge, as stated in your dispatch, on condition of the withdrawal of the charges.

FRED. A. SMITH,
*A. A. A. G.*

The counsel for accused, by permission of the court, briefly addressed the court.
The court was then cleared, the accused and his counsel retiring.
The court was then opened, accused and his counsel present, when the judge-advocate announced that the court had directed him to send the following telegram:

FORT GRANT, *Nov.* 20, 1880—10.30 a. m.

To A. A. A. GENERAL,
*Dep't Arizona, Whipple Barracks:*

Court instructs me to send the following dispatch: "The department commander having power to withdraw the charges against Captain Campbell, the court desires to be excused from making any recommendation for or against such a course." The court awaits action of department commander before proceeding with case.

EGBERT,
*Judge-Advocate.*

The court then proceeded to other business.

FORT GRANT, A. T., *Nov. 20th*, 1880—7 p. m.

The court resumed proceedings after recess. Present:

1. Lieut. Col. R. S. La Motte, Twelfth Inf'y.
2. Surgeon Andrew K. Smith, U. S. Army.
3. Captain G. M. Brayton, Eighth Inf'y.
4. Captain A. T. Smith, Eighth Inf'y.
5. Captain C. B. McLellan, Sixth Cavalry.
6. Captain S. M. Whitside, Sixth Cavalry.
7. Captain E. F. Thompson, Twelfth Inf'y.
8. Captain A. R. Chaffee, Sixth Cavalry.
9. Captain Adam Kramer, Sixth Cavalry.

Captain Harry C. Egbert, Twelfth Inf'y, judge-advocate.
The accused and his counsel present.
The judge-advocate presented to the court the following telegram:

[Whipple Barracks, 20, 1880. Rec'd at Fort Grant, A. T., Nov. 20th, 1880, 12.45 p. m.]

To H. C. EGBERT,
*Judge-Advocate Gen. Court-Martial, Fort Grant:*

The commanding general thought it was no more than due to the court, consisting of members of rank and reputation called from a distance, that their views should

consulted, particularly as they were on the ground, and before accepting Capt mpbell's pledge, hence telegram of last night, but as the court declines to make recommendation you will proceed to trial.
Signed.] FRED. A. SMITH,
*A. A. A. G.*

ccused through his counsel then requested permission to withdraw the plea of not lty on the several charges and specifications on which he had pleaded not guilty l to enter the plea of guilty. The court granted permission, and the accused aded as follows:
'o the first specification, first charge, "Guilty."
'o the second specification, first charge, "Guilty."
'o the third specification, first charge, "Guilty."
'o the fourth specification, first charge, "Guilty."
'o the fifth specification, first charge, "Guilty."
'o the sixth specification, first charge, "Guilty."
'o the first charge, "Guilty."
'o the first specification, second charge, "Guilty."
'o the seventh specification, second charge, "Guilty."
'o the eighth specification, second charge, "Guilty."
'o the ninth specification, second charge, "Guilty."
'o the tenth specification, second charge, "Guilty."
'o the second charge, "Guilty."
'o the specification, additional charge, "Guilty."
'o the additional charge, "Guilty."
Iajor A. K. Arnold, Sixth U. S. Cavalry, a witness for the defence, then came before court, and was duly sworn by the judge-advocate, in the presence of the accused, l testified as follows:
uestion by judge-advocate. Please state name, rank, and regiment.
nswer. A. K. Arnold, major, Sixth Regiment U. S. Cavalry, post commander t Grant, A. T.
uestion by accused. Will you please state to the court whether you have in your session the original pledge and resignation of the accused and letter of Captain npbell to you, copies of which appear in the record in this case?
nswer. I have.
uestion by accused. Will you produce and give the court a copy of the telegram t sent by you to headquarters, transmitting copies of the pledge, resignation, and ter of the accused?
Witness here produced copy of his telegram of November 18th, 1880, which was d to the court, and is appended, marked Exhibit H.)
'he statement of the accused was then read by his counsel, and is appended, marked hibit I.
'he court was then cleared and closed for deliberation, and having maturely con- ered the evidence adduced, finds the accused, Captain Charles H. Campbell, Sixth S. Cavalry—
)f the first specification, first charge, "Guilty."
)f the second specification, first charge, "Guilty."
)f the third specification, first charge, "Guilty."
)f the fourth specification, first charge, "Guilty."
)f the fifth specification, first charge, "Guilty."
)f the sixth specification, first charge, "Guilty."
)f the first charge, "Guilty."
)f the first specification, second charge, "Guilty."
)f the seventh specification, second charge, "Guilty."
)f the eighth specification, second charge, "Guilty."
)f the ninth specification, second charge, "Guilty."
)f the tenth specification, second charge, "Guilty."
)f the second charge, "Guilty."
)f the specification, additional charge, "Guilty."
)f the additional charge, "Guilty."
nd the court does therefore sentence him, Captain Charles H. Campbell, Sixth giment U. S. Cavalry, to be dismissed the service of the United States.
R. S. LA MOTTE,
*Lt. Col. 12 Inf., President.*

IARRY C. EGBERT,
*Captain 12th Infantry, Judge-Advocate.*

'he court then adjourned until half past 9 a. m. on the twenty-second instant.
HARRY G. EGBERT,
*Captain Twelfth Inf'y, Judge-Advocate.*

FORT GRANT, *Nov.* 22, 1880—9.30 a. [redacted]m.

The court met pursuant to the foregoing orders and adjournment of the twen[redacted]ieth instant, at nine and a half o'clock a. m. Present:

1. Lt. Col. R. S. La Motte, Twelfth Inf'y.
2. Surgeon Andrew K. Smith, U. S. Army.
3. Captain G. M. Brayton, Eighth Inf'y.
4. Captain A. T. Smith, Eighth Inf'y.
5. Capt. C. B. McLellan, Sixth Cavalry.
6. Captain S. M. Whitside, Sixth Cavalry.
7. Captain E. F. Thompson, Twelfth Inf'y.
8. Captain A. R. Chaffee, Sixth Cavalry.
9. Captain Adam Kramer, Sixth Cavalry.

Captain Harry C. Egbert, Twelfth Infantry, judge-advocate.

The proceedings of the twentieth instant were then read and approved.

There being no further business before it, the court then, at 11 o'clock a. m. [redacted] adjourned *sine die*.

R. S. LA MOTTE,
*Lieut. Col. Twelfth Infantry, Preside[redacted]t.*

HARRY C. EGBERT,
*Captain Twelfth Infantry, Judge-Advocate.*

HEAD'RS DEPT. OF ARIZONA,
*Whipple Barracks, Prescott, A. T., November* 29, 188[redacted].

In conformity with the 104 and 106 Articles of War the proceedings [finding[redacted]& sentence] of the general court-martial in the foregoing case of Captain Charles H. Campbell, 6th Cavalry, are [approved and] respectfully forwarded through the Jud[redacted]ge-Advocate-General to the Secretary of War, to be by him submitted to the President of the United States.

The undersigned, in submitting the case for the final action of the President, respec[redacted]ct-fully recommends the execution of the sentence, inasmuch as it will be seen from t[redacted]he papers herewith accompanying the record that Captain Campbell has already violate[redacted]ed the pledge submitted with his final plea.

O. B. WILLCOX,
*Colonel Twelfth Infantry, Major-General (by assignment), Commanding Department.*

The above interlineations of 3 words & 2 words, respectively, were made by me a[redacted]at h'dq'rs Dept. of Arizona, Whipple Barracks, Arizona, this 16th day of January, 188[redacted]1.

O. B. WILLCOX,
*Colonel 12th Infantry, Maj. Gen'l, by assignment, Com'd'g Dept.*

HEADQUARTERS ARMY OF THE UNITED STATES,
*Washington, D. C., Feb.* 5, 1'81.

The proceedings, findings, and sentence of the general court-martial in the fore[redacted]go-going case of Captain C. H. Campbell, 6th Cavalry, are approved, and it is recom[redacted]m-mended that the sentence be carried into execution.

W. T. SHERMAN,
*General.*

EXECUTIVE MANSION,
*February 8th*, 1881.

The sentence in the foregoing case of Captain Charles H. Campbell, 6th Cavalry, [redacted], is hereby confirmed.

R. B. HAYES.

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*Exhibit A.*

[War Department, Signal Service, U. S. A. United States telegraph, dated Whipple Bks., 16, 1880, m [redacted]
Received at Fort Grant Nov. 16, 1880, 3.05 p. m.]

To EGBERT,
*Judge-Advocate, Grant:*

Authority granted for hire of clerk, at five dollars per day.
Letters to this effect mailed to you on Saturday.

SMITH, *A. A. A. G.*

29 O. B.

True copy.

HARRY C. EGBERT,
*Captain 12 Inf'y, J. A. G. C. M.*

*Exhibit B.*

I, Charles H. Campbell, captain 6th Regt. U. S. Cavalry, do hereby solemnly pledge myself to totally abstain from the use of intoxicating liquors of all kinds during the time I shall remain in active service in the Army of the United States, nor during the time aforesaid will I use the same medicinally except when prescribed by a physician, and then only in a case of absolute necessity, and the aforesaid physician having been notified of this pledge.

Made and subscribed to at Fort Grant, Arizona, this 18th day of November, 1880.

C. H. CAMPBELL,
*Capt. 6th Cav.*

Witnesses:
ROBERT HANNA,
*1st Lieut. 6th Cav.*
JOHN HAYNES.

FORT GRANT, *Nov.* 19, 1'80.

I hereby certify that the foregoing is a true copy.

HARRY C. EGBERT,
*Captain 12th Inf'y, Judge-Advocate.*

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*Exhibit C.*

FORT GRANT, ARIZONA,
*Nov.* 18, 1880.

To the ADJUTANT-GENERAL, U. S. ARMY,
(Through intermediate channels):

SIR: I have the honor to tender herewith my resignation as an officer of the Army of the United States.

C. H. CAMPBELL,
*Capt. 6th Cav.*

I hereby certify that the foregoing is a true copy.

HARRY C. EGBERT,
*Captain 12th Inf'y, Judge-Advocate.*

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*Exhibit D.*

FORT GRANT, A. T.,
*Nov.* 18, 1880.

Major A. K. ARNOLD,
*Post Commander:*

SIR: I hand you herewith my pledge of total abstinence from the use of intoxicating liquors during my continuance in the active service in the Army, and also my resignation as an officer therein, and authorize you to forward the latter to the President in case I should violate my pledge, if in your discretion you see proper to do so. I cannot to-day say more than I have written, but in the near future I hope to have the opportunity of saying more than I can now express.

C. H. CAMPBELL,
*Capt. 6th Cav.*

I hereby certify that the foregoing is a true copy.

HARRY C. EGBERT,
*Captain 12th Inf'y, Judge-Advocate.*

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*Exhibit E.*

(Copy of A. A. A. G. telegram.)

[Whipple Barracks, 19th, 1880. Received at Fort Grant Nov. 19, 1880, 10.45 a. m.]

To Maj. ARNOLD,
*Fort Grant:*

Your dispatch was received last night. I am directed by the commanding general to say Captain Campbell stands charged with drunkenness on duty in the field and

after returning to his post. One set of charges is preferred by the colonel of his re[redacted]i-ment. A court-martial has been called at great expense to the government, and h[redacted]as been delayed three days. Captain Campbell can submit the papers you mention to the court, and their recommendation is necessary and will have due weight with t[redacted]he department commander.

SMITH, *A. A. A. G.*

A true copy.

HARRY C. EGBERT,
*Captain 12th Inf't'y, Judge-Advocate.*

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*Exhibit F.*

[War Department, Signal Service, U. S. A. United States telegraph, dated Whipple B'ks, 19th, [redacted]m. Received at Fort Grant, A. T., Nov. 19, 1880, 8.40 p. m.]

To H. C. EGBERT,
*J. A. G. C. M., Grant:*

Dispatch rec'd. Before the case goes any further the com'd'g gen'l wishes the co[redacted]t to make recommendations as regarding the acceptance or non-acceptance of the Ca[redacted]. Campbell pledge, as stated in your dispatch, on condition of the withdrawal of th[redacted]e charges.

FRED. A. SMITH,
*A. A. A. G.*

55, O. B.

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*Exhibit G.*

[War Department, Signal Service, U. S. A. United States telegraph dated Whipple Bks., 20th, 1880, m. Received at Fort Grant, A. T., Nov. 20, 1880, 12.45 p. m.]

To H. C. EGBERT,
*Judge-Advocate Gen. Court-Martial, Fort Grant:*

The commanding general thought it was no more than due to the court, consisting of members of rank and reputation called from a distance, that their views should be consulted, particularly as they were on the ground, and before accepting Capt. Campbell's pledge, hence telegram of last night, but as the court declines to make any recommendation you will proceed to trial.

FRED. A. SMITH,
*A. A. A. G.*

77, O. B.

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*Exhibit H.*

GRANT, *Nov.* 18, 1880.

To A. A. GENERAL,
*Whipple Barracks, Prescott, A. T.:*

Please lay before the commanding general the following, forwarded to me by Capt. Campbell, and which I hold in my possession:

"FORT GRANT, A. T., *Nov.* 18, 1880.

"Major A. K. ARNOLD,
"*Post Commander:*

"SIR: I hand you hereby my pledge of total abstinence from the use of intoxicating liquors during my continuance in the active service in the Army, and also my resignation as an officer therein, and authorize you to forward the latter to the President in case I should violate my pledge, if in your discretion you see proper to do so. I cannot to-day say more than I have written, but in the near future I hope to have the opportunity of saying more than I can now express.

"C. H. CAMPBELL,
"*Captain 6th Cavalry.*

"*Pledge.*

"I, Charles H. Campbell, capt. 6th reg't, U. S. Cavalry, do hereby solemnly pledge myself to totally abstain from the use of intoxicating liquors of all kinds during the time I shall remain in active service in the Army of the United States, nor during the time aforesaid will I use the same medicinally, except when prescribed by a

ysician, and then only in a case of absolute necessity, and the aforesaid physician ving been notified of this pledge.

'Made and subscribed to at Fort Grant, Arizona, this 18th day of November, 1880.

"C. H. CAMPBELL,
"*Capt. 6xth Cav'y.*

"Witnesses:
"ROBERT HANNA, *1st Lt. 6th Cav'y.*
"JOHN HAYNES.

"*Copy of resignation.*

"FORT GRANT, ARIZONA, *Nov.* 18*th*, 1880.

To the ADJUTANT-GENERAL, U. S. ARMY:
"(Thro' intermediate channels.):

"SIR: I have the honor to tender herewith my resignation as an officer of the Army the United States.

"C. H. CAMPBELL,
"*Capt. 6th Cav'y.*"

In consideration of the above papers I recommend that the charge be withdrawn. lo this as I think the ends of justice and the good of the service will be accomished.

The court has just entered upon this case, but no testimony has been taken, and the lge-advocate informs me that nothing has been done, so that action on this matter uld not interfere in any manner with the proceedings so far.

I respectfully request immediate action if possible.

ARNOLD,
*Post Commander.*

Official copy respectfully furnished to judge-advocate of general court-martial, conned pursuant to Special Orders 142 & 148, Nov'b'r 3d and 12th, 1880, h'dq'rs, dept. Arizona.

A. K. ARNOLD,
*Major 6th Cavalry, Commanding.*

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*Exhibit I.*

The accused, in connection with his plea of guilty to the charges preferred against m, asks the indulgence of the court in making the following statement:

That prior to the 17th of September last he had been for several months absent on ve, visiting his friends in the East; that on his return trip across the continent to n Francisco, and from San Francisco to this post, he was in ill health, and could t but little, and the condition of his stomach became such that it was difficult to tain anything upon it; that this condition of his system was aggravated after he ched Yuma by the heat and the excessive use of ice-water on the cars.

During this journey he indulged in the use of intoxicating liquors, but not to such extent as to produce drunkenness, but yet sufficient to keep him under its influce.

That upon his arrival at Tucson he met Capt. W. A. Rafferty, of the 6th Cavalry, om whom he learned of General Carr's expedition against the Indians, and that his mpany (Co. A, 6th Cav.) had been ordered out to take part in this expedition; that he ereupon determined to hasten on and join his command, though advised by Capt. fferty to remain at Camp Lowell until he should be better; that he came to Fort ant on the evening of September 15th, and about four o'clock on the evening of the th he left for Fort Bowie to join his command; that he made the trip, a distance of out fifty-five miles, in his private ambulance, sitting on the front seat with the iver, riding all night without sleep, and arriving at Bowie about 8 o'clock in the orning.

That owing to loss of sleep and fatigue, and his debilitated condition, he felt badly, id indulged moderately after his arrival at Bowie in the use of liquor, the effect of hich was, however, greatly increased by his condition of health.

That upon or soon after his arrival he went to the quarters of his battalion commander, Major A. K. Arnold, and delivered to him some letters which had been sent accused, and reported for duty; that at that time he was not, as he believes, incacitated for duty by intoxication, but has no doubt that his appearance, owing to e causes above named, indicated a greater degree of intoxication than in fact exted.

That during all the times named in the specifications under the first charge, the contion of his health was not improved, and he felt compelled, in order to remain with

his command at all, to continue the use of liquor, but that if he had been in his ordinary health and able to eat, the quantity of liquor so used by him would not have produced any visible effect whatever, and that the effect of the liquor did not, as he believes, impair his mental faculties so as to materially interfere with the discharge of his duties, or at least to the extent that the condition of his system might indicate to others. And so far as the first charge is concerned, he most positively states that nothing but his anxiety to be with his command upon said expedition could have induced him voluntarily to leave Fort Grant at the time he went to Bowie, as above stated, and having gone, that any excess, apparent or real, into which he may have fallen, would not have occurred if he had been in ordinary health and condition when he so joined his command.

That having been sent back in arrest and no charges having been preferred against him, at the expiration of eight days he asked to be discharged from arrest, and was discharged accordingly.

That upon being relieved from arrest, he was put on duty for a week as officer of the day, there being then but few officers at the post, and after the return of the battalion, continued to discharge all his duties as officer of the day, drill and other duties until he was placed in arrest by Major Arnold on Novembsr 1st.

That during all this time he was not in good health, and the mortification and disappointment caused by his first arrest, and not being permitted to remain with his command upon the expedition, caused him a great deal of unhappiness, and, as is so often the case under like circumstances, compelled him frequently to use intoxicating drinks, but that such use did not, until the 1st day of November, cause perceptible intoxication so far as he knows.

That on the morning of the first he was on duty as officer of the day, and discharged the duties of such officer until at or about the hour of three o'clock p. m., when he was ordered to appear at the office of the post commander, and was there placed in arrest.

While admitting the charge preferred by Major Arnold, he is conscious of a fact that may not be apparent to others, that but for the first offense and its immediate consequences the second would not have occurred. He is perfectly aware that explanations and reasons or excuses cannot change the findings or sentence of this court, but he deems it due to himself to show that his offense was committed under circumstances which may in some degree palliate it.

He further states that he desires that his pledge, which appears in the record, and his resignation which accompanies it, and is conditional upon his keeping it, shall not be withdrawn, but shall continue in force; and he now declares most solemnly not only his determination but his ability to keep it.

C. H. CAMPBELL,
*Capt. 6th Cav.*

[First indorsement.]

BUREAU OF MILITARY JUSTICE,
*Dec.* 17, 1880.

The within record is respectfully returned to Maj. Gen. O. B. Willcox, comm'd'g Department of Arizona, and his attention invited to the omission from his endorsement thereon of the approval of the reviewing authority, made necessary by the 104th Article of War. That the proceedings were in fact approved by the department commander may probably be inferred from his recommendation that the sentence be enforced; but as the language of the 104th article will be seen to be imperative, its requirements, as well as those of the 106th article, must be observed in order to give to the record the necessary legal validity.

W. M. DUNN,
*Judge-Adv.-General.*

[Second indorsement.]

HEADQUARTERS DEPARTMENT OF ARIZONA, WHIPPLE BARRACKS,
*Prescott, January* 17, 1881.

Respectfully returned to the Judge-Advocate-General of the Army, my original indorsement on the within proceedings completed, as suggested in the preceding indorsement hereon.

O. B. WILLCOX,
*Colonel 12th Infantry, Major-General, by assignment, Commanding Dept.*

[Third indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*Washington, February* 16, 1881.

These proceedings will be filed in the office of the Judge-Advocate-General without further action, the President having accepted the resignation of Capt. Charles H.

Campbell, 6th Cavalry, to take effect February 15, 1881. (See par. 12, S. O., No. 38, A. G. O., Feb'y 15, 1881.)

By order of the Secretary of War:

R. C. DRUM,
*Adjutant-General.*

Official copy:

D. G. SWAIM,
*Judge-Advocate-General.*

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WASHINGTON, *March* 24, 1882.

DEAR GENERAL: I understand the case of Lieutenant Campbell, late of the Army, is before the committee of which you are chairman for consideration as to the propriety of his restoration. I do not know the circumstances connected with his leaving the Army, but I want to say a word for the family, and, if possible, for the sake of the family, that he be restored. Colonel and Mrs. Campbell, the father and mother, have for many years heen associated with the best families, resident and official, in this city. They have but two children, a son and daughter, the latter married and living abroad. They are getting old and are possessed of but small means. Colonel Campbell is a hopeless invalid, who will never again be able to do anything to aid his family. For these reasons I ask that you take as favorable a view of the case of the son as you can, consistently.

Very truly, yours,

U. S. GRANT.

General J. A. LOGAN, *U. S. S.*

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OFFICE OF THE ADMIRAL,
*Washington, D. C., February* 28, 1882.

SIR: I have been called upon to express my opinion in regard to Capt. Charles Campbell, late of the Army.

I know nothing of the circumstances which led to Captain Campbell's dismissal. I know that since that time he has been under my continual observation and that of my family. He has visited at my house more frequently than perhaps anywhere else, and has behaved in the most exemplary manner, like a perfect gentleman.

I have taken great trouble to ascertain the facts, and am satisfied that in no instance has Captain Campbell deviated from the pledge which he made since he left the Army.

I am satisfied that he has the power and the will to give up what has so far to him been the source of so much mortification.

I am convinced that his conduct was more the result of youthful indiscretion than anything else. I do not think his habits confirmed ones. This he has shown by his example during the past year.

I would be the last person to give a recommendation to any one whose habits were intemperate and who could not restrain himself, but in this case I think the lesson he has received is such a one as Captain Campbell will not fail to remember and profit by. I am sure the leniency of the department must be highly appreciated by Captain Campbell and his friends.

I have the honor to remain, very respectfully, your obedient servant,

DAVID D. PORTER,
*Admiral.*

Hon. ROBERT T. LINCOLN,
*Secretary of War.*

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WASHINGTON, *February* 27, 1882.

DEAR SIR: Permit me to express my sincere hope that Capt. Charles H. Campbell may be reinstated in the Army.

As one of his neighbors, and of those who know him best, it gives me pleasure to say that during the last fifteen months the oath of total abstinence taken by him in November, 1880, has been strictly observed, and that, with others of his friends, I feel assured that, devoted as he has been, and still is, to his profession, he will do credit to the service and to those who recommend his reinstatement.

I am, yours, respectfully,

RICH'D D. CUTTS.

Hon. SAMUEL SHELLABARGER, *&c.*

WAR DEPARTMENT, SURGEON-GENERAL'S OFFICE,
*Washington, March* 1, 1882.

During last summer, fall, and the present winter, Capt. Charles H. Campbell (late United States Army) has resided with his parents' within three doors from me. In all this time I have seen him almost daily, and have frequently conversed with him, and can say most confidently that his habits have been irreproachable, his deportment correct and gentlemanly. For several weeks during the summer he was without the restraining influence of his parents' presence, but adhered to his good resolutions, showing his determination and ability to refrain from excess.

JOS. K. BARNES,
*Surgeon-General, U. S. A.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 661.

IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1462.]

*The Committee on Claims, to whom was referred the bill S.* (1462) *for the relief of E. J. Baldwin, report thereon as follows:*

The bill provides for the appropriation of $11,094.86 in payment for making tunnels on the Colorado Indian Reservation, in Arizona.

Your committee referred the bill to the Commissioner of Indian Affairs for information, and received the following letter from him:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, April 26, 1882.*

SIR: I have the honor to be in receipt of your letter of 24th instant, inclosing Senate bill (No. 1462) for the relief of E. J. Baldwin, alleged assignee of Patrick Harrington and John H. Jilbert, who, under the firm name of Harrington & Jilbert, make claim against this department for certain work done in connection with an irrigating ditch on the Colorado River Reservation in Arizona, while under the administration of J. A. Tonner, United States Indian agent in 1873, and calling for information relative thereto.

I have to report that on the 28th day of August, 1873, articles of agreement were entered into between said agent and firm, for the latter to run tunnels through the spurs or points of a mesa on said reservation so as to connect with an irrigating canal to be used for agricultural purposes; that they, the contractors, were to receive for each linear foot at the rate of $6 in United States gold coin, except on hard cement or blasting rock, for which they were to receive $6.50; and that payment was to be made therefor when funds should be appropriated by Congress for the purpose.

Agent Tonner certifies that under said agreement said firm constructed 1,760.81 feet of tunneling, which, at the prices named, would entitle them to $10,894.86. Upon presentation to this office of said articles of agreement, and the account for said work for approval and settlement under the provisions above mentioned, my predecessor, Hon. E. A. Hayt, disapproved the same on the ground that the articles of agreement had not been previously submitted for and received the approval of the Hon. Secretary of the Interior, although Messrs. Harrington & Jilbert had prosecuted other work of a similar character before, and had been paid by the agent therefor sums aggregating several thousand dollars, from funds placed to his credit for the purpose by this office.

I believe that the work in question was performed according to terms of the contract, and that the claimants are entitled to payment therefor. Concerning any right of ownership of Mr. E. J. Baldwin, in this claim as assignee, the only knowledge in possession of this office is that a copy of a decree in his favor, made by the United States circuit court of California, was exhibited, but is not on file.

Very respectfully,

H. PRICE,
*Commissioner.*

Hon. ANGUS CAMERON,
*United States Senate.*

Your committee are satisfied that E. J. Baldwin, named in the bill, is the lawful owner of said claim under and pursuant to a decree of the United States court for the district of California, made in 1879.

It appears by the said letter of the Commissioner of Indian Affairs that the amount unpaid on the claim is $10,894.86, and not $11,094.86, as stated in the said bill.

We recommend that the bill be amended by inserting the sum of $10,894.86 in place of $11,094.86. Also amend by striking the letter "G" out of the name "Gilbert," and inserting "J," his name being "Jilbert" and not "Gilbert"; and, when so amended, that the bill do pass.

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TH CONGRESS, 1st Session. } SENATE. { REPORT No. 662.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

. SEWELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1844.]

*e Committee on Military Affairs, to whom was referred the bill (S. 1844) for the relief of Fitz-John Porter, have considered the same, and respectfully report:*

That Fitz-John Porter, then a major-general of volunteers and colo-l in the Army, was tried by court martial convened at Washington, d sentenced "to be cashiered, and to be forever disqualified from hold-g any office of trust or profit under the United States," which sentence as carried into effect January 27, 1863; that General Porter has made equent applications for a rehearing, upon the ground that the find-gs and sentence of said court were contrary to the evidence, and of w evidence, not accessible at the time of the trial, which completely sproves the charges and specifications upon which said findings and ntence were based; that President Hayes appointed a military board, nsisting of Major-General Schofield, Brigadier-General Terry, and olonel Getty, to review the record of said court, and to examine any w evidence which might be offered, and to report to the President hat action justice required of him in the case.

The proceedings of that board are fully set forth in the memorial of eneral Porter, addressed to Congress, which is made a part of this re-rt, and is as follows:

[Senate Mis. Doc. No. 91.—47th Congress, 1st session.]

*morial of Fitz-John Porter, in favor of such action by Congress as will restore him to the positions of which he was deprived by the action of a court-martial.*

MAY 8, 1882.—Referred to the Committee on Military Affairs and ordered to be printed.

*the Senate and House of Representatives in Congress assembled:*

Your memoralist would respectfully represent that, in January, 1863, he was most justly declared guilty of certain charges preferred against him before a court-martial nvened at the city of Washington, and by the sentence of said court was cashiered d forever disqualified from holding any office of trust or profit under the Govern-nt of the United States; which sentence was carried into effect on the 27th day of nuary, 1863.

That, from the promulgation of said finding and sentence, your memorialist has pro-sted against the injustice of the same, and, by every means in his power, has sought be relieved therefrom, and to be restored to the positions of which said sentence de-ved him.

That after repeated applications to the President for such relief as might be in the

power of the Executive Department of the government, on the 12th day of April, 1878, the President issued the following order:

[Special Orders No. 78.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
*Washington, April* 12, 1878.

The following order has been received from the War Department.

An appeal has been made to the President, as follows:

"NEW YORK, *March* 9, 1878.

"To His Excellency RUTHERFORD B. HAYES,
"*President of the United States:*

"SIR: I most respectfully, but most urgently, renew my oft-repeated appeal to have you review my case. I ask it as a matter of long delayed justice to myself. I renew it upon the ground heretofore stated, that public justice cannot be satisfied so long as my appeal remains unheard. My sentence is a *continuing sentence*, and made to follow my daily life. For this reason, if for no other, my case is ever within the reach of executive as well as legislative interference.

"I beg to present copies of papers, heretofore presented, bearing upon my case, and trust that you will deem it a proper one for your prompt and favorable consideration.

"If I do not make it plain that I have been wronged, I alone am the sufferer. If I do make it plain that great injustice has been done me, then I am sure that you, and all others who love truth and justice, will be glad that the opportunity for my vindication has not been denied.

"Very respectfully, yours,

"FITZ-JOHN PORTER."

In order that the President may be fully informed of the facts of the case of Fitz-John Porter, late major-general of volunteers, and be enabled to act advisedly upon his application for relief in said case, a board is hereby convened, by order of the President, to examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said board, and to report with the reasons for their conclusion, what action, if any, in their opinion justice requires should be taken on said application by the President.

*Detail for the board.*

Maj. Gen. J. M. Schofield.
Brig. Gen. A. H. Terry.
Col. G. W. Getty, Third Artillery.
Maj. Asa B. Gardner, Judge Advocate, Recorder.

The board will convene at West Point, N. Y., on the 20th day of June, 1878, and is authorized to adjourn from time to time, and to sit in such place as may be deemed expedient.

By command of General Sherman:

E. D. TOWNSEND,
*Adjutant-General.*

Official:
L. H. PELOUZE,
*Assistant Adjutant-General.*

**And the said board took the case into consideration and submitted the following report:**

## REPORT OF BOARD OF OFFICERS CONVENED AT WEST POINT, IN JUNE, 1878.

NEW YORK CITY, *March* 19, 1879.

To the honorable the SECRETARY OF WAR, *Washington, D. C.:*

SIR: We, the Board of Officers appointed by order of the President to examine the evidence in the case of Fitz-John Porter, late major-general of volunteers, and to report, with the reasons for our conclusions, what action (if any), in our opinion, justice requires should be taken by the President on the application for relief in that case, have the honor to make the following report. The Recorder has been directed to forward to the Adjutant-General of the Army the printed record of our proceeding, including all the evidence examined and the arguments of counsel on either side.

We have made a very thorough examination of all the evidence presented and bearing in any manner upon the merits of the case. The Recorder has, under instructions

from the board, sought with great diligence for evidence in addition to that presented by the petitioner, especially such as might appear to have a bearing adverse to the claims urged by him.

Due care has been exercised not to inquire into the military operations of the Army of Virginia, or the conduct of officers thereof, any further than has seemed necessary to a full and fair elucidation of the subject submitted to us for investigation. On the other hand, we have not hesitated to examine fully into all the facts, accurate knowledge of which seemed to us to be necessary to the formation of a correct judgment upon the merits of the case, and to the determination of the action which justice requires should be taken by the President on the petitioner's application for relief.

We have had the benefit of the testimony of a large number of officers of the late Confederate army, a kind of testimony which was not available at the time of General Porter's trial by court-martial. We have also availed ourselves of the testimony of many officers and soldiers of the Union forces who were present on the battle-field and of much documentary evidence, to throw additional light upon points not made perfectly clear in the record of evidence taken before the court-martial; and we have had the use of accurate maps of the battle-field of Manassas, constructed from recent actual surveys made, under the direction of the Chief of Engineers, by a distinguished officer of that corps, who was himself a participant in that battle.

Without such a map neither the testimony upon which General Porter was convicted nor the additional testimony submitted to this board could have been correctly understood.

The evidence which we have thus been able to examine, in addition to that which was before the court-martial, has placed beyond question many important facts which were before the subjects of dispute, and in respect to some of which radically erroneous opinions were entertained by General Porter's accusers, and doubtless by the court-martial that pronounced him guilty.

The result has been, as we believe, to establish beyond reasonable doubt all the facts essential to the formation of a correct judgment upon the merits of the case of Fitz-John Porter. We are thus enabled to report, with entire unanimity, and without doubt in our own minds, with the reasons for our conclusions, what action, in our opinion, justice required should be taken by the President on the petitioner's application for relief.

The evidence presents itself under several distinct heads, viz:

First. The imperfect, and in some respects erroneous, statements of facts, due to the partial and incorrect knowledge in possession of witnesses at the time of the court-martial, and the extremely inaccurate maps and erroneous locations of troops thereon, by which erroneous statements were made to convey still more erroneous impressions.

Second. The opinions and inferences of prominent officers based upon this imperfect knowledge.

Third. The far more complete and accurate statements of facts now made by a large number of eye-witnesses from both the contending forces.

Fourth. The accurate maps of the field of operations and the exact positions of troops thereon at different periods of time, by which statements otherwise contradictory or irreconcilable are shown to be harmonious, and opposing opinions are shown to have been based upon different views of the same military situation; and,

Finally. The conflicting testimony relative to plans of operations, interpretation of orders, motives of action, and relative degrees of responsibility for unfortunate results.

A careful consideration of all the material facts now fully established, in combination with the conflicting or inconclusive testimony last above referred to, gives rise to several diverse theories respecting the whole subject with which General Porter's case is inseparably connected. These diverse views of the subject necessarily involve, in a greater or less degree, the acts, motives, and responsibilities of others as well as those of the petitioner. We have considered with great care and labor, and with our best ability, each and all of these phases in which the subject can be and has been presented, and we find that all these possible views of the subject, when examined in the light of the facts which are fully established by undisputed testimony, lead inevitably to one and the same conclusion in respect to the guilt or innocence of Fitz-John Porter of the specific charges upon which he was tried and pronounced guilty by the court-martial.

Therefore, while exposing General Porter's conduct to the test of the highest degree of responsibility which recognized military principles attached to the command he held under the circumstances in which he was placed, and the orders which he had received, we are able to take that view of the whole subject which seems to involve in the least possible degree any question as to the acts, motives, or responsibility of others.

We will now proceed to give, as concisely as we are able to do, a narrative of the events which gave rise to the charges against Maj. Gen. Fitz-John Porter, omitting the multitude of interesting but unessential details and all facts having no necessary

bearing upon his case, and limiting ourselves to a plain statement of the essential facts of the case which have been established, as we believe, by positive proof.

While the Army of the Potomac was withdrawing from its position on the James River in August, 1862, the Army of Virginia, under Major-General Pope, was ordered to hold the line of the Rappahannock, and to stand on the defensive until all the forces could be united behind that river. General Pope was given to understand that, when this concentration was effected, Major-General Halleck, the General in-Chief, was to take the field in command of the combined armies. On the other hand it appears that Major-General McClellan, then commanding the Army of the Potomac, was given to understand that he was to direct the operations of all the forces in Virginia as soon as they should be united.

It appears that General Pope was notified on the 25th of August that an active campaign was soon to be commenced, without waiting for a union of all the forces, and under some commander other than either of those before named. But this information appears to have been of a secret character, afterwards suppressed, and not made known to General McClellan and his subordinates until five days later, when the order appeared from the War Department, depriving McClellan of the command of all his troops then between the Potomac and the Rappahannock, although leaving him in nominal command of the Army of the Potomac.

Thus General Porter, who joined General Pope's army about that time, was left under the impression, which all had previously shared, that the operations of the army were to continue of a defensive character until all the forces should be united and proper preparations made for the commencement of an offensive campaign under a general designated by the President to command the combined armies. But just then the Confederate general, Jackson, with three divisions of infantry, one of cavalry, and some artillery, commenced his movement to turn the Union right through Thoroughfare Gap, which gap he passed on the 26th, and that night struck the rear of the Union army at Bristoe and Manassas Junction. The next morning, August 27, the Union army changed front to the rear, and was ordered to move on Gainesville, Greenwich, and Warrenton Junction.

General Porter, with his two divisions of the Fifth Corps, arrived at Warrenton Junction on the 27th, and there reported in person to General Pope. That afternoon Hooker's division was engaged with the enemy at Bristoe Station; McDowell and Sigel were moving on Gainesville, and Heintzelman and Reno on Greenwich. Banks was covering the rear below Warrenton Junction, and guarding the trains in their movement toward Manassas Junction. Porter was at first ordered to move toward Greenwich upon the arrival of Banks at Warrenton Junction, but after Hooker's engagement at Bristoe the following order was sent him, and he received it at 9.50 p. m.:

"HEADQUARTERS ARMY OF VIRGINIA,
"*Bristoe Station, August 27*, 1862—6.30 p. m.

"Major-General F. J. PORTER, *Warrenton Junction:*

"GENERAL: The major-general commanding directs that you start at 1 o'clock to-night and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about 300 killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send him word to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary on all accounts that you should be here by daylight. I send an officer with this dispatch who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealeton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

"By command of General Pope.

"GEORGE D. RUGGLES,
"*Colonel and Chief of Staff.*

"P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately upon his doing so. If Banks is not at the Junction, instruct Colonel Clary to run the trains back to this side of Cedar Run, and post a regiment and a section of artillery with it.

"By command of General Pope.

"GEORGE D. RUGGLES,
"*Colonel and Chief of Staff.*"

This order plainly contemplated an aggressive movement against the enemy early on the 28th, and required the presence of General Porter's corps at Bristoe Station as

early as possible in the morning, to take part in the pursuit of and attack upon the enemy.

The order did not indicate any anticipation of defensive action at Bristoe, but, on the contrary, it indicated continuous, active, and aggressive operations during the entire day of the 28th, to drive the enemy from Manassas, and clear the country. Hence the troops must arrive at Bristoe in condition for such service.

The evidence clearly shows that General Porter evinced an earnest desire to comply literally with the terms of the order, and that he held a consultation with his division commanders, some of his brigade commanders, and his staff officers on the subject. One of his divisions had arrived in camp late in the evening, after a long march, and was much fatigued.

If the troops marched at 1 o'clock, none of them could have much sleep before starting, and, even if they could arrive at Bristoe by or soon after daylight, they must be in poor condition for a vigorous pursuit of the enemy, who was already some distance beyond Bristoe. But this was not regarded by General Porter as sufficient reason for hesitating to make the attempt to comply literally with the order. He still urged, against the advice of his division commanders, the necessity of implicit obedience. Then, further consideration of the subject disclosed the fact that the road was filled with army trains, which had been pressing in that direction all day and as late at night as they could move, until the way had become completely blocked with wagons. The trains of the army moving back from the line of the Rappahannock had been ordered to take that road to the number of "two or three thousand." In the language of one of the most intelligent witnesses, the mass of wagons blocked together at places in the road was "like a lot of ice that jams in on the shore." The night had become very dark, or, as testified by most of the witnesses, excessively dark. It would have been difficult to march troops upon a plain and unobstructed road. It was a manifest physical impossibility to march over that road that night, or to remove the obstructions in the darkness of the night. When this situation was made evident, General Porter reluctantly consented to delay the movement two hours, or until 3 o'clock. At that hour the march was commenced, but it was found that no appreciable progress could be made before daylight. Nothing was gained, or could have been gained, by the attempt to move before the dawn of day. It would have been wiser to have delayed the attempt to move until 4 o'clock.

A vigorous and persistent effort to make that march, commencing at 1 o'clock, could only have resulted in greatly fatiguing the troops and throwing them into disorder, from which they could not have been extricated until long after daylight, without making any material progress, and would thus have caused the corps to arrive at Bristoe at a later hour and in a miserable condition.

Abundant experience in situations similar to that above described leaves no room for doubt what General Porter's duty was. He exercised only the very ordinary discretion of a corps commander, which it was his plain duty to exercise, in delaying the march until 3 o'clock, and in his attempt to move at that time instead of at 4 o'clock he showed only too anxious a desire to comply with the *letter* of his orders.

If the order had contemplated, as has been represented, an attack by the enemy at dawn of day, then it would have been General Porter's duty to start promptly, not at 1 o'clock, but at the moment he received the order, so as to have brought at least some fragments of his infantry to Bristoe in time to aid in repelling that attack. That was the most that he could have done in any event, even by starting the moment the order was received, and then his troops would have been in no condition for any aggressive movement that day.

General Porter reached Bristoe Station as soon as practicable with his corps on the morning of the 28th, and there remained, under orders from his superior commander, until the morning of the 29th, taking no part in the operations of the 28th.

In the morning of the 28th McDowell sent Ricketts' division of his corps to Thoroughfare Gap to resist the advance of re-enforcements from the main body of Lee's army, then known to be marching to join Jackson. Banks was at Warrenton Junction and Porter at Bristoe. The rest of the army moved from Gainesville, Greenwich, and Bristoe on Manassas Junction to attack Jackson at that place; but that general withdrew his forces during the night of the 27th and morning of the 28th toward Sudley and Groveton. He was followed by Heintzelman and Reno, via Centreville; and McDowell and Sigel, after having marched some distance toward Manassas, were ordered to direct their march toward Centreville. In this movement toward Centreville, King's division of McDowell's corps struck the right of Jackson's force, late in the afternoon, just north of the Warrenton turnpike, a mile west of Groveton. A sharp contest ensued, lasting until some time after dark, when King still held his ground on the turnpike. Reynolds was then near the right of King, Sigel on his right near the Stone House, Heintzelman and Reno near Centreville; Ricketts, who had been sent in the morning to Thoroughfare Gap, was disputing with Longstreet the passage of the gap.

Thus it was still hoped to strike Jackson a decisive blow on the morning of the 29th,

before re-enforcements could reach him. In the mean time the Confederate general had taken up a favorable position a little to the north and west of Groveton and Sudley to await attack.

Under these conditions General Porter, who was still at Bristoe Station, received, at 6 a. m., the following order from General Pope:

"HEADQUARTERS ARMY OF VIRGINIA,
"*Near Bull Run, August* 29, 1862—3 a. m.

"GENERAL: McDowell had intercepted the retreat of Jackson. Sigel is immediately on the right of McDowell. Kearney and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville, at the first dawn of day, with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

"I am, general, very respectfully, your obedient servant,
"GEORGE D. RUGGLES,
"*Colonel and Chief of Staff.*

"Major-General PORTER."

Under this order, General Porter marched promptly with his corps toward Centreville. He had passed Manassas Junction with the head of his column, when he was halted by counter orders, issued in consequence of a grave change which had occurred in the situation since the night before.

King had withdrawn from his position near Jackson's right, on the Warrenton turnpike, and had fallen back to Manassas Junction. Ricketts had fallen back in the night from Thoroughfare Gap to Gainesville, and thence, in consequence of the movement of King, had retired to Bristoe Station.

Thus the way had been left open for the retreat of Jackson to Thoroughfare Gap, or for the advance of Longstreet from that point, and ample time had elapsed for them to effect a junction, either at the Gap or near Groveton, before a force could again be interposed to prevent it. The opportunity to attack Jackson's detached force with superior numbers had passed beyond the possibility of recall.

As soon as the withdrawal of King became known to General Pope, he hastily sent a verbal message to General Porter to retrace his steps and move towards Gainesville, and soon followed this message with the following order, which was received by General Porter about 9.30 a. m.

"HEADQUARTERS ARMY OF VIRGINIA,
"*Centreville, August* 29, 1862.

"Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious or we will lose much.

"JOHN POPE,
"*Major-General, Commanding.*"

Under these orders General Porter advanced promptly with his corps, followed by King's division, on the direct road from Manassas Junction toward Gainesville, having knowledge of the military situation as above described.

General Porter had met General McDowell near Manassas Junction, and they had conversed with each other relative to this order, placing King's division under Porter's command. McDowell claims that it was conceded that he might go forward and command the whole force, under the 62d Article of War, but he desired to reunite all the divisions of his corps on that part of the field where Reynolds then was. Hence he wrote to Pope on this subject, awaited his orders, and did not exercise any command over Porter's corps until after the receipt of further orders from Pope.

When, about 11.30 o'clock, the head of Porter's column arrived at Dawkins' Branch, about three and a half miles from Gainesville and nine and a half miles from Thoroughfare Gap, he met the enemy's cavalry advance, and captured some of Longstreet's scouts. The clouds of dust in his front and to his right, and extending back toward Thoroughfare Gap, showed the enemy coming in force, and already arriving on the field in his front.

Morell's division was at once deployed; Sykes closed up in support, King's division following. A regiment was sent forward across the creek, as skirmishers, and Butterfield's brigade was started across the creek to the front, and somewhat to the right, with orders to seize, in advance of the enemy, if possible, the commanding ground on the opposite ridge, about a mile distant. Morell's division, with Sykes in support, was ready to advance at once to the support of Butterfield.

At this stage of Porter's operations, some time between 11.30 and 12 o'clock, McDowell, in person, arrived on the field and arrested the movement Porter was making, saying to him in the hearing of several officers, "Porter, you are too far out. This is no place to fight a battle," or words to that effect.

well had received, a few minutes before, a dispatch from Buford, informing t seventeen regiments of infantry, a battery, and some cavalry had passed Gainesville at 8.45 o'clock, and moved down the Centreville road towards n, and hence must have been on the field in front of Sigel and Reynolds at o hours.

ast in Porter's immediate front and extending across toward Groveton, as well toward Gainesville, showed that large forces of the enemy, in addition to those by Buford, were already on the field. The latest information from the Con- army showed the whole force of the enemy within reach of Gainesville by the 29th. McDowell's troops (Ricketts' division and some cavalry) had de- Longstreet's advance at Thoroughfare Gap from about noon until dark on the day, 28th. Hence, Lee's column had had eighteen hours by the morning of to close up in mass near the Gap, and seven hours that morning in which to ight miles and form line on the field of battle.

on, who had been supposed anxious to retreat, and for whom the way had been n, had not retreated, but was still holding his position of the previous evening, fident of adequate re-enforcements. Sigel's pursuit had been checked, where d that morning, at Groveton.

certain that the head of column of Lee's main army had arrived on the field of Groveton at least two hours in advance of the arrival of the head of col- Porter's and McDowell's corps at Dawkins' Branch, and it was so nearly certain main body of Lee's army was already on the field and in line of battle as to ly require corresponding action. This was Porter's impression at the time, conveyed it to McDowell by words and gesture that left no doubt in the mind atter that he (Porter) believed the enemy was in force in his immediate front. trast to this evident preparation of the enemy for battle, only Porter's nine or sand men were ready for action, of the thirty-five thousand men then com- he left wing of the Union Army.

' corps, ten thousand, was still at Bristoe without orders to move beyond that Ricketts' division, eight thousand, was near Bristoe, under orders to move to t, but his men were so worn out by constant marching, night and day, that ld not possibly be got to the field even for defensive action that day. King's , seven thousand, was just in rear of Porter, but was so fatigued as to be offensive action, and hardly able to march.

this long column, stretching back from Dawkins' Branch by way of Manassas to and even beyond Bristoe, had struck the right wing of the Confederate line of battle, while a gap of nearly two miles remained in the Union line be- orter and Reynolds, who was on the left of Sigel, near Groveton.

companying map, marked Board Map No. 1, illustrates the positions of the oops at noon of August 29th, and the probable positions of the Confederate t the same time, as indicated by the information then in possession of the enerals. This map is not intended to show the actual positions of the troops ime, but to correctly interpret the information upon which the Union generals ed.

as the military situation on the Union left and Confederate right of the field cDowell arrested Porter's advance, and Porter's operations under the direct om Pope heretofore mentioned ceased, and, under new orders just received, ecame subordinate to McDowell.

ly had the effort to destroy Jackson before he could be re-enforced totally failed, Confederate army was on the field and in line, while the Union army was not. e to resume defensive action, awaiting the concentration of the army, had not ived, but had been too long postponed.

way to the front McDowell had received the following order from General dressed jointly to him and Porter, and Porter had received a copy of the same nonent before McDowell's arrival.

[General Order No. 5.]

"HEADQUARTERS ARMY OF VIRGINIA,
"*Centreville, August* 29, 1862.

rals MCDOWELL and PORTER: You will please move forward with your joint ds towards Gainesville. I sent General Porter written orders to that effect an l a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton , and must now be not far from Gainesville. I desire that as soon as commu- is established between this force and your own the whole command shall halt. e necessary to fall back behind Bull Run, at Centreville, to-night. I presume e so on account of our supplies. I have sent no orders of any description to and none to interfere in any way with the movements of McDowell's troops, hat I sent by his aid-de-camp last night, which were to hold his position on enton pike until the troops from here should fall upon the enemy's flank and

rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order it will not be strictly carried out. One thing must be had in view, that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or next day. My own headquarters will be for the present with Heintzelman's corps or at this place.

"JOHN POPE,
"*Major-General, Commanding.*"

This order and the 62d Article of War made it the duty of McDowell to command the combined corps, so long as they should continue to act together, and General Pope should be absent from the field. In this interpretation of the law Generals McDowell and Porter agreed, and upon it they acted at the time. Upon McDowell devolved the responsibility of modifying the joint order as its terms authorized, and as the military situation seemed imperatively to require.

The terms of the order contemplating that communication should be established with the troops on the other road, or, as General McDowell interpreted it, that line should be formed in connection with those troops, that the whole command should then halt, and that the troops must not go beyond a point from which they could reach Bull Run by that night or the next morning, and the military situation, as it then appeared to them, was briefly discussed by the two generals.

The situation was exceedingly critical. If the enemy should attack, as he seemed about ready to do, Porter's two divisions, about nine thousand men, were all the force then ready to stand between Lee's main army, just arrived on the field, and McDowell's long and weary column, or the left flank of Pope's army near Groveton. McDowell was "excessively anxious" to get King's division over on the left of Reynolds, who then occupied with his small division that exposed flank; and he quickly decided that "considerable advantages" were "to be gained" by departing from the terms of the joint order, so far as to make no attempt to go further toward Gainesville, and to at once form line with the troops then engaged near Groveton; and this departure from the strict letter of the joint order was evidently required by the military situation as it then appeared and as it did actually exist.

After this brief consultation the two generals rode together through the woods to the right, about three-quarters of a mile toward Groveton, and made a personal examination of the ground. As soon as this was done, McDowell decided not to take the troops through these woods, but to separate his own corps from Porter's, take King's division (Ricketts following) around the woods by the Sudley Springs road, and thus put them in beyond the woods and on the left of Reynolds.

McDowell then left Porter very hurriedly, announcing his decision, as he testified, by the words, "You put your force in here, and I will take mine up the Sudley Springs road on the left of the troops engaged at that point against the enemy," or words to that effect. Even these few words, we are satisfied, Porter did not hear, or did not understand, for he called, as McDowell rode away, "What shall I do?" and McDowell gave no audible answer, but only a wave of the hand. In this state of uncertainty, according to the testimony of one of General Porter's staff officers, Porter sent a message to King's division to ascertain positively if that division was ordered away by McDowell, and, if not, to give proper orders for its action with his corps, and a reply was returned by McDowell himself that he was going to the right and should take that division with him; that Porter had better stay where he was, and if necessary to fall back he could do so on McDowell's left.

This testimony has given rise to much controversy; but in our opinion the question whether that message was or was not sent is unimportant. If it was sent, it did not differ in substance from the instructions which General McDowell testifies he had previously given to General Porter, "You put your force in here," &c. Neither could be construed as directing what Porter's action should be, but only as deciding that he should continue on that line while McDowell would take his own troops to another part of the field.

There appears to have been an understanding, derived either from previous conversation or from the terms of the joint order, that when McDowell did get King's division on the other side of the woods, Morell's division on the right of Porter's corps should make such connection or establish such communication with that of King as might be practicable through the woods. None of them then knew how wide was that belt of woods, nor what was its character beyond where they had reconnoitered, nor whether the ground beyond was in possession of the enemy.

When the two generals had started to take that ride to the right, Morell's troops had been ordered to follow them, and Griffin's brigade had led off after its pickets had

been called in. After McDowell took his departure this movement was continued for some time and until Griffin had crossed the railroad and reached a point near half way across the belt of woods and where the forest became dense. There the movement was arrested. This movement might have meant an attempt to stretch out Morell's line through the woods, so as to connect with King's on the right or a completion of the deployment for an attack upon the enemy in front. General Porter explained it as intended for an immediate attack upon the enemy if he found he could keep King in support, and that he only desisted upon being informed that King was going away. But the attack would have been a rash one under the circumstances, even with King's support. Soon after this, scouts were sent on through the woods to look for King, Reynolds, Sigel, or some body of Union troops in the direction where artillery firing was heard.

Presently Griffin was withdrawn to the south side of the railroad. The enemy's artillery opened on his troops during this latter movement, and was replied to by one of Morell's batteries, but few shots being fired on either side. Then Morell's division was put in defensive order to hold the ground then occupied and under cover from the enemy's artillery. The scouts sent through the woods ran upon the enemy's pickets, and were driven back. This effort to get scouts through the woods was repeated from time to time until late in the afternoon, but every effort failed. The scouts were all driven back or captured. As it turned out, this resulted from the fact that King's division did not get up on the right of the woods at all. That division reached a point some distance in the rear of its position in the line about 4.30 p. m., and then, after some marching and countermarching, was sent northward to the Warrenton pike. Thus the gap in the line which McDowell's troops were to occupy remained open all the afternoon, and the margin of the timber remained in possession of the enemy's pickets.

These failures to connect or to communicate directly along the front were reported by Porter to McDowell by way of the Sudley Springs road, on which McDowell had gone. The reports were made in at least four different written dispatches, which have been preserved. The hour was named in only one, apparently the latest, sent at 6 o'clock in the evening. Two reports—one about 4 o'clock and the other about 6.30 p. m.—were sent to General Pope direct. Both of these were received by him, but have not been preserved.

About the time General McDowell arrived on the field at Porter's position, and for an hour or two thereafter, a heavy artillery combat was going on between the Union batteries near Groveton and the Confederate artillery. During this artillery combat, and until 5 o'clock p. m., there was no infantry engagement, except skirmishing and some short and sharp contests between small portions of the opposing forces, and until 6.30 p. m. no musketry was audible to any one in Porter's corps.

On the Confederate side, as it now appears, Porter's display of troops—three brigades in line—in the early part of the afternoon, had given rise to the expectation of an attack on their right. This having been reported to General Longstreet, that commander sent his reserve division (Wilcox's) from his extreme left, just north of the Warrenton turnpike, to his extreme right, on the Manassas and Gainesville road.

Wilcox reached this latter position about 4 o'clock p. m., and Porter having before that time withdrawn his troops under cover, some troops from the Confederate right (D. R. Jones') were pushed to the front in the woods occupied by Porter's skirmishers, apparently to reconnoiter. This movement gave rise to the impression among Porter's officers (Morell's division) that the enemy was about to attack about 5 p. m.

General Pope having arrived some time after noon on the field in the rear of Groveton, and General McDowell's column approaching that part of the field by the Manassas and Sudley road, an attack was ordered upon the enemy's extreme left near Sudley, and a written order was sent, dated 4.30 p. m., to Porter to attack the enemy's right, and, if possible, his rear. After some time had elapsed, General Pope ordered McDowell, with King's division and other troops, to pursue up the Warrenton turnpike the enemy, who, thus to be assailed upon both flanks, would be compelled to retreat.

The attack on Jackson's left was begun by Kearney about 5 p. m.; but the order to Porter was not delivered in time. The messenger did not find General Porter until sunset. Thus, at 5 o'clock, nothing having occurred to suggest to General Porter any change in the plan indicated in the joint order to retire behind Bull Run instead of giving battle that day, the sound of artillery near Sudley, so much apparently to the rear of Groveton, suggested to Porter, who was then at Bethlehem Church, that Sigel was retiring or perhaps being driven back, and that his artillery was then in a new position near the Sudley Springs road.

If it was true that Sigel was being driven back, the military situation was extremely perilous, and Porter must instantly do what he could to avert disaster. His order to Morell, which must have been issued at that instant, shows what he proposed to do. It is as follows, viz:

"General MORELL: Push over to the aid of Sigel and strike in his rear. If you

reach a road up which King is moving,* and he has got ahead of you, let him pass but see if you cannot give help to Sigel. If you find him retiring, move back toward Manassas, and, should necessity require it, and you do not hear from me, push to Centreville. If you find the direct road filled, take the one via Union Mills, which is to the right as you return.

"F. J. PORTER,
"*Major-General.*

"Look to the points of the compass for Manassas.

"F. J. PORTER."

This movement would have left Porter with Sykes alone to hold the Manassas road and cover the retreat of Ricketts' worn-out troops, who then were stretched along the road for four or five miles both toward Sudley and back toward Manassas Junction, while Morell should cover the retreat of the center of the army. But now before Morell had time to commence this movement, came a report from him that the enemy was coming down in force to attack both his front and flank. Porter might in a few minutes have to meet the attack of twenty thousand men. The purpose to cover the retreat of Sigel must needs be abandoned. Hence Porter dispatched to Morell:

"General MORELL: Hold on, if you can, to your present place. What is missing?
"F. J. PORTER."

Again:

"General MORELL: Tell me what is passing quickly. If the enemy is coming, hold to him, and I will come up. Post your men to repulse him.

"F. J. PORTER,
"*Major-General.*"

And again, in reply to advice from Morell that they had better retire, &c.:
"We cannot retire while McDowell holds on."

Notwithstanding contradictory testimony, we believe it was at this time that Porter ordered Piatt's brigade, of Sturgis' command, about eight hundred men, to move back to Manassas Junction and take up a defensive position to cover the expected retreat.

General Porter reported to General McDowell his views and intentions in the following dispatches:

"Generals MCDOWELL and KING: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in great force on this road, and as they appear to have driven our forces back, the fire of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going, and I will communicate with you. Had you not better send your train back?

"F. J. PORTER,
"*Major-General.*"

"General MCDOWELL or KING: I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me, I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

"F. J. PORTER,
"*Major-General Volunteers.*"

"General MCDOWELL: The firing on my right has so far retired that, as I cannot advance and have failed to get over to you except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate, please do so. I have sent many messengers to you and General Sigel and get nothing.

"F. J. PORTER,
"*Major-General.*"

"An artillery duel is going on now; been skirmishing for a long time.

"F. J. P."

"General MCDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened upon us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a bat-

* The Sudley road.

tery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this message came. I have no cavalry or messengers now. Please let me know your designs, whether you retire or not. I cannot get water and am out of provisions. Have lost a few men from infantry firing.

"F. J. PORTER,
"*Major-General Volunteers.*

"AUG. 29—6 p. m."

But Porter soon found the sounds of artillery had deceived him. The renewal of the firing toward Groveton showed that Pope's troops were still there. Piatt's brigade was then recalled, and no further preparations for retreat were made.

Next came to Porter about 5.30 o'clock a report from the right that the enemy was in full retreat, and heavy sounds of musketry soon after showed that serious work had commenced near Groveton. Porter ordered Morell to make a strong reconnaissance to learn the truth. Morell, knowing the report must be false, at least as to the enemy in his front, prepared to support this reconnaissance with his whole division. While this preparation was being made came the long-delayed order, dated 4.30 p. m., to attack the enemy in flank or rear:

HEADQUARTERS IN THE FIELD,
"*August* 29—4.30 p. m.

"Major-General PORTER: Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

"JOHN POPE,
"*Major-General Commanding.*"

This order, though dated at 4.30 p. m., was not received by Porter, at Bethlehem Church, before 6.30 p. m.

The evidence before the court-martial tending to show that Porter received the "4.30" order in time to execute it is found in the testimony of the officer who carried the order, and of one of the orderlies who accompanied him. Neither of these two witnesses appears to have carried a watch, and their several statements of the time when the order was delivered were based on estimates of the time occupied by them in riding from General Pope's headquarters to the place where they found General Porter. One of them at least knew from an inspection of the order that it was dated at 4.30; he, and probably both of them, therefore assumed that it was then that they started to deliver it, and adding to that hour the estimated time occupied by them, they severally fixed the hour of delivery. It is now proved by the testimony of the officer who wrote the dispatch that "4.30" was not the hour when the messenger started, but was the hour when he began to write the dispatch, and consequently that it was after that hour that the officer started to deliver it.

It is also shown that these messengers did not and could not, if other parts of their own testimony are true, have traveled over the route which they supposed they had taken. Moreover, it was proved by unquestionable testimony that since the court-martial trial one of these witnesses had made statements and admissions inconsistent with and contradictory of his former testimony, and the other witness confessed before us that recently he had deliberately made false statements in regard to the route taken while carrying the dispatch. We have therefore felt compelled to lay the testimony of these witnesses out of the case. An attempt was made to support these witnesses by the testimony of another person, who, as it was alleged, also accompanied as an orderly the officer charged with the dispatch, but his testimony was so completely broken down by cross-examination that we regard it as entitled to no weight whatever.

On the other hand, the testimony of General Sykes, Lieutenant-Colonel Locke, Captain Montieth, Lieutenant Ingham, and Lieutenant Weld before the court-martial that the order in question was not delivered until about sundown, either a little before or a little after that hour, has now been supported by a new and entirely independent witness, Captain Randol, and has been singularly confirmed by the production, for the first time, of the dispatch from Porter to McDowell, dated 6 p. m., the terms of which utterly forbid th supposition that at that time Porter had received the order.

The moment this order was received Porter sent his chief of staff, Colonel Locke, to General Morell with orders to make the attack at once. He then wrote and sent a reply to Pope, and immediately rode to the front. On his arrival there Morell had about completed his preparations for the attack under the previous order to make a reconnaissance, but darkness had already come on. It was evidently impossible to accomplish any good that night, for, even if Morell might have begun the attack be-

, Sykes could not have been got into line after the order was received. T[illegible]e
t Groveton had already so far spent its force as to derive no possible aid fro- [illegible]m
attack. The order was based upon conditions manifestly erroneous, and d[illegible]i-
hat was impossible to be done. To push Morell's division against the enem[illegible]y
ark would have been in no sense obedience to that order. Porter wise[illegible]y
he preparations to cease, and the troops were put into position to pass th[illegible]e
cketing in all directions, for Porter had but a few mounted men and th[illegible]e
ad two thousand five hundred cavalry near his flank.

this time, when darkness had come on, the rear of McDowell's column of weary
ere passing by the rear of Porter's column, still several miles from their destined
the field. The Union army was not even yet ready for battle.

companying maps, marked Board Maps Nos. 2 and 3, exhibit respectively
ally the military situation at the time the 4.30 p. m., order was issued, and
ch was then understood by General Pope to exist, as explained to the court-
pon the trial of General Porter.

ieve this plain and simple narrative of the events of the 29th of August clearly
e true character of General Porter's conduct during that time. We are un-
nd in that conduct anything subject to criticism, much less deserving of con-
ondemnation.

s duty that afternoon was too plain and simple to admit of discussion. It
old his position and cover the deployment of McDowell's troops until the lat-
me of them, should get into line; then to connect with them as far as might
sary and practicable, and then, in the absence of further orders, to act in
vith those troops and others to the right.

g's division had come up on the right, as was expected, and had advanced to
Porter would have known it instantly, and thus could have joined in the
at.

main army retired, as indicated in the joint order, it was Porter's duty to
o, after having held his ground long enough to protect its left flank and to
e retreat of Ricketts' troops.

did for a moment entertain the purpose of trying to give aid to Sigel, who
posed to be retiring before McDowell had got King's division up to his sup-
hat was the nearest to making a mistake that Porter came that afternoon.
on enough became evident that such a purpose must be abandoned; Porter
e his full share of responsibility where he was.

eparations made for retreat were the ordinary soldierly dispositions to enable
promptly what he had good reason to expect he might be required to do at
ent and must do at nightfall.

le frequent reports to his superiors, stating what he had done and what he
unable to do; what his situation was in respect to the enemy in his front,
trength of the enemy there; what his impressions were from the sounds of
ward his right; how he had failed thus far to get any communications from
nander in the main army, or any orders from General Pope; asking McDowell,
nearest to him, for such information as his (McDowell's) *designs for the night*;
an aid-de-camp to General Pope for orders, and receiving no reply, not even
ion that the 4.30 order had been sent to him; and, finally, informing his
that if left to himself, without orders, he would have to retire at night for
water, which he could not get where he was. These reports were sent not
uently, but early enough to insure the receipt of orders from Pope or correct
ion from McDowell, if they had any to send him, before it would be time for
ithdraw. All these dispatches were sent in the latter part of the afternoon.
indicated a purpose to retire only after being assured that the main army
ing, and then to recover the retreat of the army as far as possible, or to with-
er nightfall, as the joint order had indicated, if no further orders or informa-
eneral Pope's plans could be obtained.

is no indication in any of those dispatches, when fairly construed, nor in any-
ich Porter did or said, of any intention to withdraw until after dark, unless
d to do so by the retreat of the main army; and even then he was compelled
n until McDowell's troops could get out of the way, and that was not until
k, for Ricketts' division was on the road in Porter's rear all the afternoon.

erfectly clear that Porter had no thought whatever of retreating *from the*
of withdrawing because of the enemy in his front; for when the enemy was
advancing as if to attack, his orders were: "If the enemy is coming, hold
"Post your troops to repulse him." "We cannot retire while McDowell
"

ears to have been assumed in the condemnation of General Porter's conduct
ad some order to attack or some information of aggressive plans on the part
al Pope, or some intimation, suggestion, or direction to that effect from Gen-
owell, or that there was such a battle going on within his hearing, or some-
e in the military situation that required him to attack the enemy without

orders before receiving the 4.30 p. m. order at sunset. All this was the exact reverse of the truth. General Pope's last order, General McDowell's directions while he was with General Porter, the military situation as then known to both Porter and McDowell, and the movement McDowell had decided to make to get his own troops into line of battle, and the state of the action on the right of the field, all combined to absolutely forbid any attack by Porter during that entire afternoon until he received Pope's order at sunset, and even that order could not possibly have been given if the situation had been correctly understood. An attack by him would have been a violation of the spirit of his orders, and a criminal blunder leading to inevitable disaster. In short, he had no choice as a faithful soldier but to do substantially what he did do.)

The range of our investigation has not enabled us to ascertain the source of the great error which was committed in the testimony before General Porter's court-martial respecting the time of arrival of the main body of Lee's army on the field of Manassas. But the information which was in possession of the Union officers at noon of the 29th of August, and afterwards published in their official reports, together with the testimony before the court-martial, affords clear, explicit, and convincing proof that the main body of that army must have been there on the field at that time.

The recent testimony of Confederate officers hardly adds anything to the conclusiveness of that proof, but rather diminishes its force by showing that one division (Anderson's) did not arrive until the next morning; while the information in their possession at that time required the Union officers to assume that that division as well as the others had arrived on the 29th. Yet General Porter's conduct was adjudged upon the assumption that not more than one division under Longstreet had arrived on the field, and that Porter had no considerable force in his front.

(The fact is that Longstreet, with *four* divisions of full 25,000 men, was there on the field before Porter arrived with his two divisions of 9,000 men; that the Confederate general-in-chief was there in person at least two or three hours before the commander of the army of Virginia himself arrived on the field, and that Porter with his two divisions saved the army of Virginia that day from the disaster naturally due to the enemy's earlier preparation for battle.)

If the 4.30 order had been promptly delivered, a very grave responsibility would have devolved upon General Porter. The order was based upon conditions which were essentially erroneous, and upon expectations which could not possibly be realized.

It required an attack upon the enemy's flank or rear, which could not be made, and that the attacking force keep close on Reynolds, who was far to the right and beyond reach. Yet it would have been too late to correct the error and have the order modified. That order appeared to be part of a general plan. It must be executed promptly or not at all. If Porter had made not the impossible attack which was ordered, but a direct attack on the enemy's right wing, would he have been blameless for the fruitless sacrifice of his troops? We believe not. It is a well-established military maxim that a corps commander is not justifiable in making an apparently hopeleless attack in obedience to an order from a superior who is not on the spot, and who is evidently in error in respect to the essential conditions upon which the order is based. The duty of the corps commander in such a case is to make not a real attack, but a strong demonstration, so as to prevent the enemy in his front from sending reinforcements to other parts of his line.

This is all that Porter would have been justifiable in doing, even if he had received the 4.30 order at 5 o'clock; and such a demonstration, or even a real attack made after 5 'clock by Porter alone could have had no beneficial effect whatever upon the general result. It would not have diminished in the least the resistance offered to the attacks made at other points that afternoon. The display of troops made by Porter earlier in the afternoon had all the desired and all possible beneficial effect. It caused Longstreet's reserve division to be sent to his extreme right in front of Porter's position. There that division remained until about 6 o'clock—too late for it to take any effective part in the operations at other points of the line.

(A powerful and well-sustained attack by the combined forces of Porter's corps and King's division upon the enemy's right wing, if it had been commenced early in the afternoon, might have drawn to that part of the field so large a part of Longstreet's force as to have given Pope some chance of success against Jackson; but an attack by Porter alone could have been but an ineffective blow, destructive only to the force that made it, and, followed by a counter-attack, disastrous to the Union Army. Such an attack, under such circumstances, would have been not only a great blunder, but, on the part of an intelligent officer, it would have been a great crime.)

(What General Porter actually did do, although his situation was by no means free from embarrassment and anxiety at the time, now seems to have been only the simple, necessary action which an intelligent soldier had no choice but to take. It is not possible that any court-martial could have condemned such conduct if it had been correctly understood. On the contrary, that conduct was obedient, subordinate, faithful, and judicious. It saved the Union Army from disaster on the 29th of August.)

This ends the transactions upon which were based the charges of which Gene[redacted] Porter was pronounced guilty; but some account of the part taken by him and [redacted] corps in the events of the following day, August 30th, which gave rise to a cha[redacted] which was withdrawn, is necessary to a full understanding of the merits of the ca[redacted]

At 3 a. m. of the 30th, General Porter received the following order, and in com[redacted] ance with it promptly withdrew from his position in presence of the enemy a[redacted] marched rapidly by the Sudley road to the center of the battle-field, where he repor[redacted] to General Pope for orders:

"HEADQUARTERS ARMY OF VIRGINIA,
"IN THE FIELD NEAR BULL RUN,
"*August* 29, 1862—8.50 p. m.

"GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

"JOHN POPE,
"*Major-General, Commanding.*

"Major-General F. J. PORTER."

[Received August 30—3.30 a. m.]

At first sight it would appear that in this prompt and unhesitating movement, under this order, General Porter committed a grave fault. He was already on the field of battle confronting the enemy in force, and holding a position of vital importance to the security of Pope's army; while the latter appeared, from the order, to be wholly in the dark respecting these all-important facts. It was true the order was most positive, imperative, and also distrustful in its terms. But those very terms served to show only the more forcibly that the order was based upon a total misapprehension of the essential facts, without which misapprehension it would not seem possible that such an order could have been issued. The well-established military rule is that such an order must never be obeyed until the commander who gave it has been informed of his error and given an opportunity to correct it; but, upon close examination, the opposite view of Porter's conduct under this order appears to be the just one.

Porter had repeatedly reported to McDowell the presence of the enemy in large force in his front. Presumably these reports had gone to Pope, as one of them had in fact. Porter had also sent an aide-de-camp with a written message to Pope about 4 p. m., and had sent a written reply to the 4.30 p. m. order after 6.30 p. m. These last two dispatches have not been preserved by General Pope, and hence their contents are not known to us; but we are bound to presume that they reported the situation as Porter then knew it, and as he had frequently reported it to McDowell, and the last of these dispatches, in reply to the 4.30 p. m. order, was later than the latest of those in which Porter had spoken of any intention to fall back. Hence, Porter had already given to his superior all the information which it was possible for him to give, and nothing remained for him but to obey the order. This movement of Porter's corps on the morning of the 30th was the beginning of the unfortunate operation of that day. This corps, which had been protecting the left flank of Pope's army, was withdrawn from its important position, leaving the left wing and flank exposed to attack by greatly superior force of the enemy, brought to the center of the field and then ordered "in pursuit of the enemy."

"[Special Orders No. —.]

"HEADQUARTERS NEAR GROVETON,
"*August* 30, 1862—12 m.

"The following forces will be immediately thrown forward in pursuit of the enemy and press him vigorously during the whole day. Major-General McDowell is assigned to the command of the pursuit; Major-General Porter's corps will push forward on the Warrenton turnpike, followed by the divisions of Brigadier-Generals King and Reynolds. The division of Brigadier-General Ricketts will pursue the Hay Market road, followed by the corps of Major-General Heintzelman. The necessary cavalry will be assigned to these columns by Major-General McDowell, to whom regular and frequent reports will be made. The general headquarters will be somewhere on the Warrenton turnpike.

"By command of Major-General Pope:

"GEO. D. RUGGLES,
"*Colonel and Chief of Staff.*"

"HDQRS. THIRD CORPS, ARMY OF VIRGINIA.
"*August* 30, 1862.

"Major-General McDowell being charged with the advanced forces ordered to pursue the enemy, directs me to inform you that your corps will be followed immediately by

King's division, supported by Reynolds. Heintzelman with his corps, preceded by Ricketts' division, will move on your right, on the road from Sudley Springs to Hay Market. He is instructed to throw out skirmishers to the left, which is desirable you should join with your right. General McDowell's headquarters will be at the head of Reynolds' division, on the Warrenton road. Organize a strong advance to precede your command, and push on rapidly in pursuit of the enemy, until you come in contact with him. Report frequently. Bayard's brigade will be ordered to report to you; push it well to the left as you advance.

"Very respectfully, your obedient servant,

"ED. SCHRIVER,
"*Colonel and Chief of Staff.*

"Major-General PORTER,
"*Commanding, &c.*"

These orders led to an attack upon the Confederate left wing, Jackson's command, made mainly by Butterfield's and Barnes's brigades, of Morell's division, and by Sykes's division, which is described as follows by the Confederate generals:

[Extract from General Lee's report of operations of the Army of Northern Virginia, battle of Manassas.]

"HDQRS. ARMY OF NORTHERN VIRGINIA,
"*March* 6, 1863.

"SIR: * * About 3 p. m. the enemy, having massed his troops in front of General Jackson, advanced against his position in strong force. His front line pushed forward until engaged at close quarters by Jackson's troops, when its progress was checked, and a fierce and bloody struggle ensued. A second and third line, of great strength, moved up to support the first, but in doing so came within easy range of a position a little in advance of Longstreet's left. He immediately ordered up two batteries, and two others being thrown forward about the same time by Col. S. D. Lee, under their well-directed and destructive fire the supporting lines were broken and fell back in confusion. Their repeated efforts to rally were unavailing, and Jackson's troops being thus relieved from the pressure of overwhelming numbers, began to press steadily forward, driving the enemy before them. He retreated in confusion, suffering severely from our artillery, which advanced as he retired. General Longstreet, anticipating the order for a general advance, now threw his whole command against the Federal center and left. * * *

"I have the honor to be, very respectfully, your obedient serveant,

"R. E. LEE, *General.*

"General S. COOPER,
"*Adjutant and Inspector-General, Richmond, Va.*"

[Extract from the report of General James Longstreet, October 10, 1862.]

* * * "During the day Col. S. D. Lee, with his reserve artillery placed in the position occupied the day previous by Colonel Walton, and engaged the enemy in a very severe artillery combat. The result was, as the day previous, a success. At 3.30 o'clock in the afternoon I rode to the front for the purpose of completing arrangements for making a diversion in favor of a flank movement then under contemplation. Just after reaching my front line I received a message for re-enforcements for General Jackson, who was said to be severely pressed. From an eminence near by, one portion of the enemy's masses attacking General Jackson were immediately within my view and in easy range of batteries in that position. It gave me an advantage that I had not expected to have, and I made haste to use it. Two batteries were ordered for the purpose, and one placed in position immediately and opened. Just as this fire began I received a message from the commanding general informing me of General Jackson's condition and his wants. As it was evident that the attack against General Jackson could not be continued ten minutes under the fire of these batteries, I made no movement with my troops."

* * * * * * *

[Extract from report of General Jackson of operations from August 15 to September 5, 1862.]

"HEADQUARTERS SECOND CORPS, A. N. V., *April* 27, 1863.

"GENERAL: After some desultory skirmishing and heavy cannonading during the day, the Federal infantry, about 4 o'clock in the evening, moved from under cover of the wood and advanced in several lines, first engaging the right, but soon extending its attack to the center and left. In a few moments our entire line was engaged in a fierce and sanguinary struggle with the enemy. As one line was repulsed another took

its place and pressed forward as if determined, by force of numbers and fury of assault, to drive us from our positions. So impetuous and well sustained were these onsets as to induce me to send to the commanding general for re-enforcements; but the timely and gallant advance of General Longstreet on the right relieved my troops from the pressure of overwhelming numbers, and gave to these brave men the chance of a more equal conflict. As Longstreet pressed upon the right the Federal advance was checked, and soon a general advance of my whole line was ordered.

"T. J. JACKSON,
"*Lieutenant-General.*

"Brigadier-General R. H. CHILTON,
"*A. A. A. General, Headquarters Department A. N. V.*"

As Longstreet's army pressed forward to strike Pope's exposed left wing and flank, Warren, with his little brigade, sprung into the gap and breasted the storm until but a handful of his brave men were left alive. Then Sykes, with his disciplined brigades, and Reynolds, with his gallant Pennsylvania Reserves, seized the commanding ground in rear, and, like a rock, withstood the advance of the victorious enemy and saved the Union Army from rout.

Thus did this gallant corps nobly and amply vindicate the character of their trusted chief, and demonstrate to all the world that "disobedience of orders" and "misbehavior in the presence of the enemy" are crimes which could not possibly find place in the head or heart of him who thus commanded that corps.

These events of the 30th of August were excluded from the evidence before the court-martial that tried General Porter; but justice requires that they should be mentioned here as having an important bearing upon the question of animus which was so strongly dwelt upon in the review of Porter's case by the Judge-Advocate-General.

The foregoing is the simple history of the part taken by Porter and his corps in the events which gave rise to the following charges and specifications, findings, and sentence, and executive action:

"[General Orders, No. 18.]

"WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
"*Washington, January 22*, 1863.

"I. Before a general court-martial which convened in the city of Washington, D. C., November 27, 1862, pursuant to Special Orders No. 362, dated Headquarters of the Army, November 25, 1862, and of which Major-General D. Hunter, U. S. Volunteers, is president, was arraigned and tried Major-General Fitz-John Porter, U. S. Volunteers.

"CHARGE I. 'Violation of the 9th Article of War.'

"SPECIFICATION 1ST.—'In this: that the said Major-General Fitz-John Porter, of the volunteers of the United States, having received a lawful order, on or about the 27th August, 1862, while at or near Warrenton Junction, in Virginia, from Major-General John Pope, his superior and commanding officer, in the following figures and letters, to-wit:

"HEADQUARTERS ARMY OF VIRGINIA,
"*August 27*, 1862—6.30 p. m., Bristoe Station.

"GENERAL: The major-general commanding directs that you start at one o'clock to-night and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you send word to him to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealeton. Say to Banks, also, that he had best run back the railroad train to this side of Cedar Run. If he is not with you, write him to that effect.

"By command of Major-General Pope:
(Signed) "GEO. D. RUGGLES,
"*Colonel and Chief of Staff.*

"Major-General F. J. Porter, *Warrenton Junction.*

"P. S.—If Banks is not at Warrenton Junction leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately. If Banks is not at the junction instruct Colonel Clary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it

"By command of Major-General Pope:
(Signed) "GEO. D. RUGGLES,
"*Colonel and Chief of Staff.*"

Did then and there disobey the said order, being at the time in the face of the enemy. This at or near Warrenton, in the State of Virginia, on or about the 28th of August, 1862.'

"SPECIFICATION 2D.—'In this: that the said Major-General Fitz-John Porter, being in front of the enemy, at Manassas, Virginia, on or about the morning of August 29, 1862, did receive from Major-General John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to wit:

"HEADQUARTERS ARMY OF VIRGINIA,
"*Centreville, August* 29, 1862.

"You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts and instruct him to join the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view: that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or the next day. My own headquarters will, for the present, be with Heintzelman's corps or at this place.

(Signed) "JOHN POPE,
"*Major-General Commanding.*

"Generals MCDOWELL and PORTER."

Which order the said Major-General Porter did then and there disobey. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.'

"SPECIFICATION 3D.—'In this: that the said Major-General Fitz-John Porter, having been in front of the enemy during the battle of Manassas, on Friday, the 29th of August, 1862, did on that day receive from Major-General John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to-wit:

"HEADQUARTERS IN THE FIELD, *August* 29, 1862—4.30 p. m.

"Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

(Signed) "JOHN POPE,
"*Major-General Commanding.*

"Major-General PORTER."

Which said order the said Major-General Porter did then and there disobey, and did fail to push forward his forces into action either on the enemy's flank or rear, and in all other respects did fail to obey said order. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.'

"SPECIFICATION 4TH.—'In that the said Major-General Fitz-John Porter, being at or near Manassas Junction on the night of the 29th August, 1862, did receive from Major-General John Pope, his superior and commanding officer, a lawful order, in figures and words as follows, to wit:

"HEADQUARTERS ARMY VIRGINIA, IN THE FIELD NEAR BULL RUN,
"*August* 29, 1862—8.50 p. m.

"GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are ex-

pected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

(Signed) "JOHN POPE,
"*Major-General Commanding.*

"Major-General F. J. PORTER."

And the said Major-General Fitz-John Porter did then and there disobey the said order, and did permit one of the brigades of his command to march to Centreville—out of the way of the field of battle—and there to remain during the entire day of Saturday, the 30th of August. This at or near Manassas Station, in the State of Virginia, on the 29th and 30th days of August, 1862.'

"SPECIFICATION 5TH.—'In this: that the said Major-General Fitz-John Porter, being at or near Manassas Station, in the State of Virginia, on the night of the 29th August, 1862, and having received from his superior commanding officer, Major-General John Pope, the lawful order set forth in specification fourth to this charge, did then and there disobey the same, and did permit one other brigade attached to his command—being the brigade commanded by Brigadier-General A. S. Piatt—to march to Centreville, and did thereby greatly delay the arrival of the said General Piatt's brigade on the field of the battle of Manassas, on Saturday, the 30th August, 1862. This at or near Manassas, in the State of Virginia, on or about the 29th day of August, 1862.'"

"CHARGE II.—'Violation of the 52d Article of War.'

"SPECIFICATION 1ST.—'In this: that the said Major-General Fitz-John Porter, during the battle of Manassas, on Friday, the 29th August, 1862, and while within sight of the field and in full hearing of its artillery, did receive from Major-General John Pope, his superior and commanding officer, a lawful order to attack the enemy, in the following figures and letters, to wit:

"HEADQUARTERS IN THE FIELD, *August* 29, 1862—4.30 p. m.

"Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

(Signed) "JOHN POPE,
"*Major-General, Commanding.*

"Major-General PORTER."

Which said order the said Major-General Porter did then and there shamefully disobey, and did retreat from advancing forces of the enemy without any attempt to engage them, or to aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack he was thus ordered to make to secure a decisive victory and to capture the enemy's army, a result which must have followed from said flank attack had it been made by the said General Porter in compliance with the said order which he so shamefully disobeyed. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.'

"SPECIFICATION 2D.—'In this: that the said Major-General Fitz-John Porter, being with his army corps on Friday, the 29th August, 1862, between Manassas Station and the field of battle then pending between the forces of the United States and those of the rebels, and within sound of the guns and in the presence of the enemy, and knowing that a severe action of great consequence was being fought, and that the aid of his corps was greatly needed, did fail all day to bring it on to the field, and did shamefully fall back and retreat from the advance of the enemy without any attempt to give them battle, and without knowing the forces from which he shamefully retreated. This near Manassas Station, in the State of Virginia, on the 29th of August, 1862.'

"SPECIFICATION 3D.—'In that the said Major-General Fitz-John Porter, being with his army corps near the field of battle of Manassas on the 29th of August, 1862, while a severe action was being fought by the troops of Major-General Pope's command, and being in the belief that the troops of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away, and did fall back with his army to the Manassas Junction, and leave to the disasters of a presumed defeat the said army; and did fail, by any attempt to attack the enemy, to aid in averting the misfortune of a disaster that would have endangered the safety of the capital of the country. This at or near Manassas Station, in the State of Virginia, on the 29th day of August, 1862.'

"SPECIFICATION 4TH.—'In this: that the said Major-General Fitz-John Porter, on the field of battle of Manassas, on Saturday, the 30th August, 1862, having received a lawful order from his superior officer and commanding general, Major-General John Pope, to engage the enemy's lines, and to carry a position near their center, and to take an annoying battery there posted, did proceed in the execution of that order with unnecessary slowness; and by delays give the enemy opportunities to watch and know his movements, and to prepare to meet his attack; and did finally so feebly fall upon the enemy's lines as to make little or no impression on the same, and did fall back and draw away his forces unnecessarily, and without making any of the great personal efforts to rally his troops or to keep their lines, or to inspire his troops to meet the sacrifices and to make the resistance demanded by the importance of his position, and the momentous consequences and disasters of a retreat at so critical a juncture of the day.'"

To which charges and specifications the accused, Major-General Fitz-John Porter, United States Volunteers, pleaded as follows:

"CHARGE I.

"To specification 1st, 'Not guilty.'
"To specification 2d, 'Not guilty.'
"To specification 3d, 'Not guilty.'
"To specification 4th, 'Not guilty.'
"To specification 5th, 'Not guilty.'
"And to the charge, 'Not guilty.'

"CHARGE II.

"To specification 1st, 'Not guilty.'
"To specification 2d, 'Not guilty.'
"To specification 3d, 'Not guilty.'
"And to the charge, 'Not guilty.'

"FINDING.

"The court, having maturely considered the evidence adduced, find the accused, Major-General Fitz-John Porter, of United States Volunteers, as follows:

"CHARGE I.

"Of the 1st specification, 'Guilty.'
"Of the 2d specification, 'Guilty.'
"Of the 3d specification, 'Guilty.'
"Of the 4th specification, 'Not guilty.'
"Of the 5th specification, 'Not guilty.'
"Of the charge, 'Guilty.'

"CHARGE II.—Of the 1st specification, 'Guilty, except so much of the specification as implies that he, the accused, "did retreat from advancing forces of the enemy," after the receipt of the order set forth in said specification.' Of the 2d specification, 'Guilty.' Of the 3d specification, 'Guilty, except the words "to the Manassas Junction."' Of the charge, 'Guilty.'"

"SENTENCE.

"And the court does therefore sentence him, Major-General Fitz-John Porter, of the United States Volunteers, '*to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States.*

"II. In compliance with the 65th of the Rules and Articles of War, the whole proceedings of the general court-martial in the foregoing case have been transmitted to the Secretary of War, and by him laid before the President of the United States.

"The following are the orders of the President: 'The foregoing proceedings, findings, and sentence in the foregoing case of Major-General Fitz-John Porter are approved and confirmed; and it is ordered that the said Fitz-John Porter be, and hereby is, cashiered and dismissed from the service of the United States as a major-general of volunteers, and as colonel and brevet brigadier-general in the regular service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States.

'January 21, 1863.

'ABRAHAM LINCOLN.'

"III. The general court-martial, of which Major-General Hunter is president, is hereby dissolved.

"By order of the Secretary of War:

"L. THOMAS, *Adjutant-General.*

"Official:
"*Assistant Adjutant-General.*"

(These charges and specifications certainly bear no discernible resemblance to the facts of the case as now established. Yet it has been our duty to carefully compare with these facts the views entertained by the court-martial, as shown in the findings and in the review of the case which was prepared for the information of the President by the Judge-Advocate-General, who had conducted the prosecution, and thus to clearly perceive every error into which the court-martial was led. We trust it is not necessary for us to submit in detail the results of this comparison, and that it will be sufficient for us to point out the fundamental errors, and to say that all the essential facts in every instance stand out in clear and absolute contrast to those supposed facts upon which General Porter was adjudged guilty.

The fundamental errors upon which the conviction of General Porter depended may be summed up in a few words. It was maintained, and apparently established to the satisfaction of the court-martial, that only about one-half of the Confederate army was on the field of Manassas on the 29th of August, while General Lee, with the other half, was still beyond the Bull-Run Mountains; that General Pope's army, exclusive of Porter's corps, was engaged in a severe and nearly equal contest with the enemy, and only needed the aid of a flank attack which Porter was expected to make to insure the defeat and destruction or capture of the Confederate force in their front under General Jackson; that McDowell and Poter, with their joint forces, Porter's leading, had advanced towards Gainesville until the head of their column had reached a point near the Warrenton turnpike, where they found a division of Confederate troops, "seventeen regiments," which Buford had counted as they passed through Gainesville, marching along the road across Porter's front, and going towards the field of battle at Groveton; that McDowell ordered Porter to at once attack that column thus moving to join Jackson, or the flank and rear of the line if they had formed in line, while he would take his own troops by the Sudley Springs road and throw them upon the enemy's center near Groveton; that Porter, McDowell having then separated from him, disobeyed that order to attack, allowed that division of the enemy's troops to pass him unmolested, and then fell back and retreated toward Manassas Junction; that Porter then remained in the rear all the afternoon, listening to the sound of battle and coolly contemplating a presumed defeat of his comrades on the center and right of the field; that this division of the enemy having passed Porter's column and formed on the right of Jackson's line, near Groveton, an order was sent to Porter to attack the right flank or rear of the enemy's line, upon which his own line of march must bring him, but that he had willfully disobeyed, and made no attempt to execute that order; that in this way was lost the opportunity to destroy Jackson's detached force before the other wing of General Lee's army could join it, and that this junction having been effected during the night of the 29th, the defeat of General Pope's army on the 30th thus resulted from General Porter's neglect and disobedience.

Now, in contrast to these fundamental errors, the following all-important facts are fully established:

As Porter was advancing toward Gainesville, and while yet nearly four miles from that place and more than two miles from the nearest point of the Warrenton turnpike, he met the right wing of the Confederate army, twenty-five thousand strong, which had arrived on the field that morning, and was already in line of battle. Not being at that moment quite fully informed of the enemy's movements, and being then under orders from Pope to push rapidly toward Gainesville, Porter was pressing forward to attack the enemy in his front, when McDowell arrived on the field with later information of the enemy, and later and very different orders from Pope, assumed the command, and arrested Porter's advance. This latter information left no room for doubt that the main body of Lee's army was already on the field and far in advance of Pope's army in preparation for battle. General McDowell promptly decided not to attempt to go further to the front, but to deploy his column so as to form line in connection with General Pope's right wing, which was then engaged with Jackson. To do this General McDowell separated his corps entirely from General Porter's, and thus relinquished the command and all right to the command of Porter's corps. McDowell did not give Porter any order to attack, nor did he give him any order whatever to govern his action after their separation.

It does not appear from the testimony that he conveyed to General Porter in any way the erroneous view of the military situation which was afterward maintained before the court-martial, nor that he suggested to General Porter any expectation that he would make an attack. On the contrary, the testimony of all the witnesses as to what was actually said and done; the information which McDowell and Porter then had respecting the enemy, and the movement which McDowell decided to make, and did make, with his own troops, prove conclusively that there was left no room for doubt in Porter's mind that his duty was to stand on the defensive and hold his position until McDowell's movement could be completed. It would have indicated a great error of military judgment to have done or ordered the contrary, in the situation as then fully known to both McDowell and Porter.)

General Pope appears from his orders and from his testimony to have been at that time wholly ignorant of the true situation. He had disapproved of the sending of

Ricketts to Thoroughfare Gap to meet Longstreet on the 28th, believing that the main body of Lee's army could not reach the field of Manassas before the night of the 30th. Hence, he sent the order to Porter, dated 4.30 p. m., to attack Jackson's right flank or rear. Fortunately that order did not reach Porter until about sunset—too late for any attack to be made. Any attack which Porter could have made at any time that afternoon must necessarily have been fruitless of any good result. Porter's faithful, subordinate, and intelligent conduct that afternoon saved the Union Army from the defeat which would otherwise have resulted that day from the enemy's more speedy concentration. The only seriously critical period of that campaign, viz, between 11 a. m. and sunset of August 29th, was thus safely passed. Porter had understood and appreciated the military situation, and, so far as he had acted upon his own judgment, his action had been wise and judicious. For the disaster of the succeding day he was in no degree responsible. Whoever else may have been responsible, it did not flow from any action or inaction of his.

(The judgment of the court-martial upon General Porter's conduct was evidently based upon greatly erroneous impressions, not only respecting what that conduct really was and the orders under which he was acting, but also respecting all the circumstances under which he acted. Especially was this true in respect to the character of the battle on the 29th of August. That battle consisted of a number of sharp and gallant combats between small portions of the opposing forces. Those combats were of short duration and were separated by long intervals of simple skirmishing and artillery duels. Until after 6 o'clock only a small part of the troops on either side were engaged at any time during the afternoon. Then, about sunset, one additional division on each side was engaged near Groveton. The musketry of that last contest and the yells of the Confederate troops about dark were distinctly heard by the officers of Porter's corps; but at no other time during all that afternoon was the volume of musketry such that it could be heard at the position of Porter's troops. No sound but that of artillery was heard by them during all those hours when Porter was understood by the court-martial to have been listening to the sound of a furious battle raging immediately to his right. And those sounds of artillery were by no means such as to indicate a general battle.

The reports of the 29th and those of the 30th of August have somehow been strangely confounded with each other. Even the Confederate reports have, since the termination of the war, been similarly misconstrued. Those of the 30th have been misquoted as referring to the 29th, thus to prove that a furious battle was going on while Porter was comparatively inactive on the 29th. The fierce and gallant struggle of his own troops on the 30th has thus been used to sustain the original error under which he was condemned. General Porter was, in effect, condemned for not having taken any part in his own battle. Such was the error upon which General Porter was pronounced guilty of the most shameful crime known among soldiers. We believe not one among all the gallant soldiers on that bloody field was less deserving of such condemnation than he.)

The evidence of bad animus in Porter's case ceases to be material in view of the evidence of his soldierly and faithful conduct. But it is our duty to say that the indiscreet and unkind terms in which General Porter expressed his distrust of the capacity of his superior commander cannot be defended. And to that indiscretion was due, in a very great measure, the misinterpretation of both his motives and his conduct and his consequent condemnation.

Having thus given the reasons for our conclusions, we have the honor to report, in accordance with the President's order, that, in our opinion, justice requires at his hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him—such restoration to take effect from the date of his dismissal from the service.

Very respectfully, your obedient servants,

J. M. SCHOFIELD,
*Major-General, U. S. Army.*
ALFRED H. TERRY,
*Brigadier-General, U. S. Army.*
GEO. W. GETTY,
*Brevet Major-General, U. S. Army, Colonel Third Artillery.*

Thereupon the President transmitted the following message to Congress:

*To the Senate and House of Representatives:*

I transmit herewith the "proceedings and report" of the board of officers, convened by Special Orders No. 78, Headquarters of the Army, Washington, April 12, 1878, in the case of Fitz-John Porter. The report of the board was made in March last, but the official record of the proceedings did not reach me till the 3d instant.

I have given to this report such examination as satisfies me that I ought to lay the proceedings and conclusions of the board before Congress.

As I am without power in the absence of legislation to act upon the recommendation of the report further than by submitting the same to Congress, the proceedings and conclusions of the board are transmitted for the information of Congress, and such action as in your wisdom shall seem expedient and just.

R. B. HAYES.

EXECUTIVE MANSION, *Washington, June* 5, 1879.

No final action was reached by Congress in the matter, and your memorialist addressed the following letter to the President:

NEW YORK, *December* 23.

SIR: I respectfully represent, that in January, 1863, by court-martial I was most unjustly declared guilty of charges against me, and sentenced "to be cashiered and forever disqualified from holding any office of trust or profit under the Government of the United States." From the promulgation of the verdict of that court I have protested my innocence of all wrong done, and asserted the injustice of the sentence, and presenting the sustaining evidence, I have, from time to time, urged a rehearing. In 1878 the President, in order to be fully informed of the facts of the case, and to be enabled to act advisedly upon my application for relief, appointed a Board of Army Officers to examine into the merits of the case, and to report what action, if any, in their opinion, justice required should be taken on my application. That board after a thorough examination into the facts of the case, vindicated me in every respect, and reported that, in their opinion, justice required at the hands of the President such action as might be necessary to annul and set aside the findings and sentence of the court-martial, and restore me to the position, of which that sentence deprived me, such restoration to take effect from the date of dismissal from the service. And I now respectfully and urgently represent that the sentence is a continuing sentence, and so long as it exists is within the reach and under the control of Executive power; that harsh and burdensome originally, and lasting through many years, it is for stronger reasons a subject for the consideration and action of the Executive, now that is is proven to have been founded in error and to be unjust; and I respectfully ask you, if convinced of the justice of the recommendation of the advisory board, to annul and set aside the findings and sentence of the court-martial, and to nominate me to the Senate for restoration of my rank in the Army under an act of Congress, 1868, allowing that mode of redress of wrong committed by a court-martial. And this I ask, not merely in justice to me and those most dear to me, but in justice to the Army to which I belonged, and which has ever believed in me, and to the government which honored and trusted me.

Very respectfully, yours,

FITZ-JOHN PORTER.

To the PRESIDENT.

To which your memorialist received the following communication and reply:

WAR DEPARTMENT,
*Washington, D. C., April* 15, 1882.

SIR: The President has had under consideration your letter of 23d December, 1881, in which you allege an injustice of the sentence of the court-martial under which, in 1863, you were, as an officer of the Army, "dismissed from the service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States," and refer to the report of the advisory board made in 1879, and ask the President, if convinced of the justice of the recommendation of the advisory board, to annul and set aside the finding and sentence of "court-martial," and to nominate you to the Senate for restoration to your rank in the Army. It being advisable that before considering the propriety of the action requested by you, the question of the power of the President in the premises should be determined, your letter was by the President referred to the Attorney-General for an investigation of that subject.

By direction of the President—

I have to inclose to you a copy of the opinion of the Attorney-General, dated March 15, 1882, and to inform you that the President concurs in the views therein expressed, and consequently that a compliance with the application contained in your letter is not within his authority.

I have the honor to be, very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

General F. J. PORTER, 44 *West Twenty-fifth Street, New York, N. Y.*

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SIR: Major-General Fitz-John Porter was, in 1863, tried and convicted by a general court-martial and sentenced "to be cashiered, and to be forever disqualified from

holding any office of trust or profit under the Government of the United States." The proceedings and sentence of the court were subsequently, in regular course, laid before the President, who, on the 21st of January, 1863, approved and confirmed the same, and by his order of that date, in execution of the sentence, it was "Ordered that the said Fitz-John Porter be, and hereby is, cashiered and dismissed from the service of the United States, as a major-general of volunteers, and as colonel and brevet brigadier-general in the regular service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States."

Thereupon General Porter ceased to be an officer in the military service of the United States, and his name was accordingly dropped from the rolls of the Army.

Afterwards, in 1878, upon an application then made by General Porter for relief, the President (in order that he might be fully informed of the facts of the case, and be enabled to act advisely on said application), convened a board of Army officers "to examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said board, and to report, with the reasons for their conclusion, what action, if any, in their opinion, justice requires should be taken on said application by the President." The board so convened made a report to the Secretary of War under date of March 19, 1879, in which, after giving the results of their investigations, they state that in their opinion "justice requires at his (the President's) hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him, such restoration to take effect from the date of his dismissal from service."

On the 5th of June, 1879, the report and proceedings of the board were transmitted to Congress by the President, who in his accompanying message said: "I have given to this report such examination as satisfies me that I ought to lay the proceedings and conclusions of the board before Congress. As I am without power, in the absence of legislation, to act upon the recommendations of the report further than by submitting the same to Congress, the proceedings and conclusions of the board are transmitted for the information of Congress, and such action as in your wisdom shall seem expedient and just."

There has since been no legislation by Congress on the subject. General Porter has, however, in a communication dated December 23, 1881, renewed his application to the President for relief, the relief there asked for being specifically stated by him in the following words: "To annul and set aside the finding and sentence of the court-martial, and to nominate me to the Senate for restoration to my rank in the Army under act of 1868." What hereinafter follows is addressed to the question whether it is competent for the President to afford the applicant the relief he asks, under existing law and the circumstances of his case.

On entering upon this question, we are first led to inquire as to the source of the jurisdiction exercised by courts-martial in our military service. That has been precisely and authoritatively determined. In the case of Dymes *vs.* Hoover (20 Horr., 65), the Supreme Court of the United States, after citing section 8 of the first article of the Constitution, which confers upon Congress power "to make rules for the government and regulation of the land and naval forces," the fifth amendment which requires a presentment of a grand jury in cases of capital or otherwise infamous crimes, but expressly excepts from this requirement "cases arising in the land and naval forces," and also section 2 of the second article, which declares that "the President shall be Commander-in-Chief of the Army and Navy"—remarks: "These provisions show that Congress has the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations, and that the power to do so is given without any connection between it and the third article of the Constitution defining the judicial power of the United States; indeed, that the two powers are entirely independent of each other."

Congress, in the exercise of this power, by the act of April 10, 1806, chap. 20, enacted rules and articles for the government of the armies of the United States, and therein provided for the creation of courts-martial for the trial of military offenses. (See that act, articles 64, 65, *et seq.*) These rules and articles, as modified and added to by subsequent legislation, were in force when the proceedings in the case of General Porter occurred. And in this connection it may also be stated that the Supreme Court again, in the recent case of *ex parte* Reed (100 U. S. Rep., 13), observes: "The constitutionality of the acts of Congress touching Army and Navy courts-martial in this country, if there could ever have been a doubt about it, is no longer an open question in this court."

It is assumed (there being no allegation to the contrary) that the court-martial in this case was constituted, convened, and organized in conformity with the law of the military service as ordained by Congress; that it had jurisdiction both of the offense alleged and of the person accused; that there was no fatal irregularity in the proceed-

ings nor any illegality in its sentence, and that the latter was confirmed and carried into execution agreeably to law. Upon this state of facts it may be inquired, has the President power now to review the proceedings of the court-martial and to annul its sentence?

Unless he possesses such power, it is submitted that this mode of relief is not available.

The sixty-fifth Article of War (act of April 10, 1806, cited above) provided that "no sentence of a court-martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or the officer commanding the troops for the time being; neither shall any sentence of a general court-martial in the time of peace, extending to the loss of life, or the dismissal of a commissioned officer, or which shall, either in time of war or peace, respect a general officer, be carried into execution until after the whole proceedings shall have been transmitted to the Secretary of War, to be laid before the President of the United States for his confirmation or disapproval and orders in the case." (See also Rev. Stat., p. 240, articles 105, 106, 108, in which the same provision is embodied.) Under this provision it was that the proceedings in the case of General Porter were laid before and confirmed by the President, and no other statutory provision then existed or now exists giving him a power of review over such case.

In the case of Lieutenant Devlin, who was tried by a general court-martial in 1852, and sentenced to be dismissed, and whose sentence was afterwards approved by the President under the same provision and carried into execution, Attorney-General Cushing considered the question whether the proceedings of that court-martial could then (in 1854) lawfully be reopened, reviewed, and set aside, and he held that they could not. He says, in his opinion:

"The decision of the President of the United States in cases of this sort is that of the ultimate judge provided by the Constitution and the laws. Like that of any other court in the last resort of the law, it is final as to the subject-matter. There is one, and but one, legal question which would be competent in this case after the final decision of the President upon it, namely, that a nullity of the proceeding, as being, for instance, *coram non judice* or, for other cause, absolutely void, *ab initio*." (6 Opin., 370, 711.)

In another case (that of Major Howe) the same Attorney-General remarks:

"Unless the memorial show that the court-martial had no lawful jurisdiction of the case, no cognizance of him and the offense charged, his memorial must be unavailing, for the President of the United States has not now (in 1854) any rightful authority to review and reverse the sentence of a court pronounced in a case within its jurisdiction in 1842, then duly appointed by the revising power and actually carried into full and complete execution. True it is that the office and powers of the President are perpetual, and every successor has all the powers which his predecessor had whilst in office. But this must be understood of matters executory, of things to be done, and not in relation to matters executed rightfully and legally transacted." (5 Opin., 507.)

To the same effect are earlier opinions given by Attorneys-General Legare and Nelson (4 Opin., 170 and 274) and also later opinions given by Attorney-General Bates (10 Opin., 64; 11 Opin., 19). The latter in this opinion last cited uses this language:

"Undoubtedly the President in passing upon the sentence of a court-martial and giving to it the approval without which it cannot be executed acts judicially. The whole proceeding from its inception is judicial. The trial, finding, and sentence are the solemn acts of a court, organized and conducted under the authority and according to the prescribed forms of law. It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice—rights which in the very nature of things can neither be exposed to damage nor entitled to protection from the uncontrolled will of any man, but which must be adjudged *according to law*. And the act of the officer who reviews the proceedings of the court, whether he be the commander of the fleet or the President, and without whose approval the sentence cannot be executed, is as much a part of this judgment, according to law, as is the trial or the sentence. When the President, then, performs this duty of approving the sentence of a court-martial dismissing an officer, his act has all the solemnity and significance of the judgment of a court of law.

"As it has to be performed under the same consequences now, one of the consequences is that when a judgment has been regularly entered in a case properly within the judicial cognizance, from which no appeal has been provided or taken, and it has been followed by execution, it is final and conclusive upon the party against whom it is entered. And this effect attaches, in my opinion, to the action of the President in approving the sentence of a court-martial dismissing an officer, after that approval has been consummated by actual dismissal."

Furthermore, the Supreme Court, in the case of *ex parte* Reed, above cited, referring to a general court-martial, whose doings were involved in the case, says:

"It is the organism provided by law and clothed with the duty of administering justice in this class of cases. * * * Its judgments, when approved, as required,

he same basis, and are surrounded by the same considerations which give veness to the judgments of other legal tribunals, including as well the lowest ghest, under the circumstances."

t is proper to add that the very inquiry now under examination has been re- the negative by the deliberate decision of a former administration, as appears iessage of the President of June 5, 1879, hereinbefore referred to, transmitting ess the report and proceedings of a board of Army officers upon the case of Porter. The conclusion then reached was that the President was "without i the absence of legislation, to act upon the recommendation of the report fur- by submitting the same to Congress." This conclusion is a denial of the ex- f any power in the President to review and "to annul and set aside the findings entence of the court-martial" in that case, as recommended by the board; and tled to great weight, as being the view, not only of the President himself, nmably that of his Cabinet, among whose members were men eminent in the n of the law. These opinions of my predecessors and the Supreme Court, the decision last above mentioned, all go to establish this proposition, that ie sentence of a legally constituted court-martial in a case within its jurisdic- been approved by the reviewing authority and carried into execution, it can- ward, under the present state of the law, be revised and set aside. The pro- are then at an end, and the action thus had upon the sentence is, in contem- f the law, final.

nable to arrive at a different conclusion, and I accordingly hold that in the er consideration the President has no power to review the proceedings of the rtial and annul its sentence. It follows from this view that the President can e applicant no relief through a revision of the sentence in his case. That sen- olved immediate dismissal from the Army and disability to hold office there- he dismissal is an accomplished fact, and so far the sentence is completely ex- the disability is a continuing punishment, and in regard to that the sentence executed. The latter may be remitted by the exercise of the pardoning power, ormer cannot in any way be affected thereby. Thus a pardon would not restore icant to the office in the military service from which he was dismissed. (*Ex* land, 4 Wall., 333.) This could only be done by an appointment under special y from Congress; since by the general law of the military service appoint- the rank of general officer are to be made by selection from the Army, and ncies in established regiments and corps to the rank of colonel are to be filled otion according to seniority, except in cases of disability or other incompe- rmy Register of 1881, article 6; 14 Opinions Attorney-General, 499). In this on I remark that the act of 1868, referred to by General Porter in his letter of was, as its title imports, only meant to be declaratory of the law, namely, officer cashiered or dismissed by sentence of a court-martial cannot be other- ored to the military service than through a new appointment, with the con- he Senate. The law is the same as to officers of the Army who cease to be any other way. (Mimmack *vs.* United States, 97 U. S., 427; Blake *vs.* United 03 U. S., 237.) Power to appoint is not conferred by that statute. This power subject to the general law already adverted to, and in the absence of special y from Congress it can only be exercised with respect to a person who has o be an officer in the manner above stated, where it might equally well be l if such person had never been an officer in the military service.

the general question considered the conclusion arrived at is that it is not he competency of the President to afford the applicant the relief he has asked t is to say, that it is not competent for the President to annul and set aside the nd sentence of the court-martial and to nominate to the Senate for restora- is former rank in the Army.

am, sir, very respectfully,

BENJAMIN HARRIS BREWSTER,
*Attorney-General.*

PRESIDENT.

he reception of which communications your memorialist addressed to the Pres- following petition:

MORRISTOWN, N. J. *April* 17, 1882.

SIDENT,
*ashington, D. C.:*

have the honor to acknowledge the receipt, through the Secretary of War, te of the 15th inst., of your decision upon my application of December 23, o annul and set aside the findings and sentence of the court-martial in my to nominate me to the Senate for restoration to my former rank in the Army." ecision, after determination of the powers of the President, as expressed in ion of the Attorney-General is, "that compliance with the application con- my letter is not within your power." I may have misunderstood the extent

of the constitutional power of the President when I asked you to do directly with the aid of the Senate, that which a board of distinguished Army officers had, in the interest of justice, recommended should be done, but which you, concurring in the opinion of the Attorney-General, inform me you have now the power only in part to perform, and that special legislation by Congress is needed to complete the justice asked for. My application was based upon the recommendation of an advisory board appointed by the President "to examine into the facts, and to report what action, in their opinion, justice required should be taken by the President." That board found and reported, after a long and patient examination and consideration of all the facts in the case, that my "conduct" in all the events of August, 1862, inquired into by the court-martial, by which I was tried, "was," in the light of the full evidence, that which was then laid before the court, and also that which was unattainable at the time of my trial, "not subject to criticism, much less deserving of censure or condemnation, and was obedient, subordinate, faithful, and judicious. It saved the Union Army from disaster on the 29th of August," and the advisory board recommended "that, in their opinion, justice required at his (the President's) hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him, such restoration to take effect from the date of dismissal from service." Relying also upon the clear and emphatic language of the said board, "that all the essential facts, in every instance, stand out in clear and absolute contrast to those supposed facts upon which he (I) was adjudged guilty, and that it is not possible that any court-martial could have condemned such conduct if it had been correctly understood," and believing I am entitled to the complete and just vindication recommended by the board, and that a sentence of a court-martial, subsequently proven by overwhelming and irrefragible testimony, to have been palbaply erroneous in its basis of assumed facts, and utterly destructive of the happiness and welfare of an officer who has never failed in the strictest and most honorable fidelity to his government, should not be a barrier to the relief to which I consider myself entitled, I again renew to you, as Chief Magistrate my appeal for justice. Conscious of my absolute and entire innocence, I have not ceased, from the hour of the promulgation of the sentence of the court-martial, persistently to protest against the terrible injustice done me, and have striven in every proper mode to secure my vindication, all of which public records now before you will fully establish. I now respectfully and most earnestly ask that you will grant a remission of that portion of the sentence of the court-martial which remains unexecuted, and carry into effect the recommendations of the advisory board, so far as the same lies within your constitutional power, and transmit the result of your action, together with the finding of the board, to Congress, coupled with such recommendation in the premises as you may deem just and proper.

Very respectfully, yours,

FITZ-JOHN PORTER.

In response to which the President executed and delivered to your memorialist the following instrument of remission:

CHESTER A. ARTHUR, PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all to whom these presents shall come, greeting:*

Whereas on the 10th day of January, 1863, Fitz-John Porter, then a major-general of volunteers in the military service of the United States, and also colonel of the Fifteenth Regiment of Infantry, and brevet brigadier-general in the United States Army, was, by a general court-martial, for certain offenses of which he had been thereby convicted, sentenced "to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States";

And whereas on the 21st day of January, 1863, that sentence was duly confirmed by the President of the United States, and by his order of the same date carried into execution;

And whereas so much of that sentence as forever disqualified the said Fitz-John Porter from holding office, imposed upon him a continuing penalty, and is still being executed;

And whereas doubts have since arisen concerning the guilt of the said Fitz-John Porter of the offenses whereof he was convicted by the said court-martial, founded upon the result of an investigation ordered on the 12th day of April, 1878, by the President of the United States, which are deemed by me to be of sufficient gravity to warrant the remission of that part of said sentence which has not yet been completely executed:

Now, therefore, know ye that I, Chester A. Arthur, President of the United States by virtue of the power vested in me by the Constitution of the United States, and in consideration of the premises, do hereby grant to the said Fitz-John Porter full remission of the hereinbefore mentioned continuing penalty.

In witness whereof, I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of May, A. D. 1882, and of the Independence of the United States the one hundred and sixth.

[SEAL.] CHESTER A. ARTHUR.

By the President:

FRED'K T. FRELINGHUYSEN,
*Secretary of State.*

In view of all the foregoing facts, your memorialist would pray that such action may be taken by Congress in the premises as will restore him to the positions of which the sentence of said court-martial unjustly deprived him.

And as in duty bound your memorialist will ever pray, &c., &c.

FITZ-JOHN PORTER.

MORRISTOWN, N. J., *May* 5, 1882.

The action of President Arthur in remitting the unexpired portion of the sentence of General Porter, based upon a review of the findings of the board, relieves the present application of General Porter for restoration to the Army from the objection that Congress would be revising the sentence of the court-martial. Such is not now the case. So much of the sentence as the President had the power to act upon, having been by him remitted, it now remains for Congress to perform that act of justice which the report of the board emphatically recommends in the following language:

Having thus given the reasons for our conclusions, we have the honor to report, in accordance with the President's order, that, in our opinion, justice requires at his hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him—such restoration to take effect from the date of his dismissal from service.

The committee are of the opinion that the report of said board exhausts the subject, and that Fitz-John Porter should be, as recommended by said board, restored to the service, and report the bill for that purpose favorably, with the following amendment:

"*Provided*, That said Fitz-John Porter shall receive no pay, compensation, or allowance whatsoever prior to his appointment under this act."

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 662. PART 2.

IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. LOGAN, from the Committee on Military Affairs, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill S. 1844.]

The undersigned beg leave to dissent from the report of the majority of the Military Committee of the Senate in the case now before Congress of the United States—the nature of the bill authorizing the President of the United States to nominate to the Senate Fitz-John Porter to a Colonel's position in the Army, which he held prior to being cashiered and dismissed from the Army of the United States on the 10th day of January, A. D. 1863.

The orders convening the said court-martial, their findings, sentence, and the approval of the same, are as follows:

*Proceedings of a general court-martial which convened at the city of Washington, in the District of Columbia, by virtue of the following special order:*

[Special Orders No. 362.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
*Washington, November* 25, 1862.

[Extract.]

III. The military commission ordered to assemble on the 20th instant by Special Orders No. 350, November 17, 1862, from headquarters of the Army, is hereby dissolved, and a general court-martial is hereby appointed, to meet in this city on the 27th instant, or as soon thereafter as practicable, for the trial of Major-General Fitz-John Porter, United States volunteers.

DETAIL FOR THE COURT.

Major-General D. Hunter, United States Volunteers.
Major-General E. A. Hitchcock, United States Volunteers.
Brigadier-General Rufus King, United States Volunteers.
Brigadier-General B. M. Prentiss, United States Volunteers.
Brigadier-General James B. Ricketts, United States Volunteers.
Brigadier-General Silas Casey, United States Volunteers.
Brigadier-General James A. Garfield, United States Volunteers.
Brigadier-General N. Buford, United States Volunteers.
Brigadier-General J. P. Slough, in place of Morris.
Colonel J. Holt, Judge-Advocate-General, United States Army, judge-advocate and recorder of the court.

No other officers than these named can be assembled without manifest injury to the service.

By command of Major-General Halleck:

E. D. TOWNSEND,
*Assistant Adjutant-General.*

WASHINGTON, D. C., *January* 10, 1863.

The court met pursuant to adjournment. Present: Major-General D. Hunter, United States Volunteers; Major-General E. A. Hitchcock, United States Volunteers; Brigadier-General Rufus King, United States Volunteers; Brigadier-General B. M. Prentiss, United States Volunteers; Brigadier-General James B. Ricketts, United States Volunteers; Brigadier-General Silas Casey, United States Volunteers; Brigadier-General James A. Garfield, United States Volunteers; Brigadier-General N. B. Buford, United States Volunteers; Brigadier-General J. P. Slough, United States Volunteers; and Colonel Joseph Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

The accused then presented a written address (marked "Defense of Accused," and appended hereto), which was read by his counsel in his defense.

The judge-advocate then submitted the case to the court, with the following remarks:

"I will simply remark that this case has been thoroughly and most patiently investigated. A continuous session of some forty-five days sufficiently attests this. Indeed, the greater part of the evidence touching the more important and the more severely contested points has, by re-examination and cross-examination, been again and again impressed upon your minds, so that I now feel entirely satisfied that it is completely comprehended and appreciated by you in all its bearings.

"Whatever, therefore, of inaccuracies of interpretation of testimony, and whatever of illogical deduction from it may have found a place in the very elaborate defense of the accused, which has been read, may be safely left for their correction to the recollection and the judgment of the court.

"To prepare a written reply in keeping with the gravity of this proceeding to the argument of the accused would require several days, thus involving a delay which it is most important to avoid. From this consideration, and from the urgent demand which exists for the services of members of this court in other and more active fields of duty, it is felt that the public interests will be best subserved by asking, as I now do, that you will proceed at once to deliberate upon and determine the issues which are before you."

The court was thereupon cleared for deliberation, and, having maturely considered the evidence adduced, find the accused, Major-General Fitz-John Porter, of United States Volunteers, as follows:

Of the first specification of first charge, guilty.

Of the second specification of first charge, guilty.

Of the third specification of first charge, guilty.

Of the fourth specification of first charge, not guilty.

Of the fifth specification of first charge, not guilty.

Of the first charge, guilty.

Of the first specification of second charge, guilty, except so much of the specification as implies that he, the accused, "did retreat from advancing forces of the enemy" *after* the receipt of the order set forth in said specification.

Of the second specification of second charge, guilty.

Of the third specification of second charge, guilty, except the words "to the Manassas Junction."

Of the second charge, guilty.

And the court do therefore sentence him, Major-General Fitz-John Porter, of the United States Volunteers, to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States.

D. HUNTER,
*Major-General, President.*
J. HOLT,
*Judge-Advocate.*

There being no further business before them, the court adjourned *sine die.*

D. HUNTER,
*Major-General, President.*
J. HOLT,
*Judge-Advocate.*

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HEADQUARTERS OF THE ARMY,
*Washington, January* 13, 1863.

In compliance with the sixty-fifth article of war, these whole proceedings are transmitted to the Secretary of War, to be laid before the President of the United States.

H. W. HALLECK,
*General-in-Chief.*

The following are the orders of the President:

"The foregoing proceedings, findings, and sentence in the foregoing case of Major-General Fitz-John Porter are approved and confirmed; and it is ordered that the said Fitz-John Porter be, and hereby is, cashiered and dismissed from the service of the United States as a major-general of volunteers, and as colonel and brevet brigadier-general in the regular service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States.

"ABRAHAM LINCOLN.

"JANUARY 21, 1863."

III. The general court-martial, of which Major-General Hunter is president, is hereby dissolved.

By order of the Secretary of War:

L. THOMAS,
*Adjutant-General.*

Official:

———— ————,
*Assistant Adjutant-General.*

This general court-martial, according to the decisions of the highest court of record in the United States, was as valid a judicial tribunal for the trial of causes within its competency as any court in the land.

The case of Fitz-John Porter was within the jurisdiction of this court. He appeared and was satisfied with the composition of the court-martial, and declared that he had no objection to any member of the court. Nine general officers sat in that trial under the obligations of a special oath, prescribed by statute, among other things to, "well and truly try and determine according to evidence, and to administer justice."

These nine general officers were:

1. Major-General David Hunter, United States Volunteers, of the District of Columbia. Graduated at United States Military Academy 1822; colonel and brevet major-general United States Army; now on retired list.
2. Major-General Ethan Allen Hitchcock, of Vermont. Graduated United States Military Academy 1817; now deceased.
3. Brigadier-General Rufus King, United States Volunteers, of New York. Graduated United States Military Academy 1833; subsequently resident minister to Rome; now deceased.
4. Brigadier-General Benjamin Mayberry Prentiss, United States Volunteers, of Virginia; subsequently appointed major-general of volunteers to date November 29, 1862.

[Eulogized by Hon. Reverdy Johnson in 1863 (printed pamphlet, page 11), for "skillful defense of Helena, Ark."]

5. Brigadier-General James Brewerton Ricketts, United States Volunteers, of New York. Graduated at United States Military Academy 1839; brevet major-general, United States Army; now major-general United States Army; on retired list.
6. Brigadier-General Silas Casey, United States Volunteers, of Rhode Island. Graduated at United States Military Academy 1826; subsequently appointed major-general of United States Volunteers to date May 31, 1862, in acknowledgment of service in battle of "Fair Oaks;" brevet major-general United States Army, and now on retired list.
7. Brigadier-General James Abram Garfield, United States Volunteers, of Ohio, formerly chief of staff to Major-General Rosecrans; afterward major-general United States Volunteers for gallant and meritorious services in the battle of Chickamauga. Representative in Congress from Ohio since 1862, and recently elected to the United States Senate.
8. Brigadier-General Napoleon B. Buford, United States Volunteers, of Kentucky. Graduated at United States Military Academy 1827; brevet major-general United States Volunteers; subsequently special United States commissioner for Indian affairs.
9. Brigadier-General John P. Slough, United States Volunteers; afterward chief-justice Territory of New Mexico; now deceased.

The judge-advocate was Hon. Joseph Holt, Judge-Advocate-General, who had been Secretary of War under President Buchanan, and is now a brigadier-general on the retired list of the Army.

These comprised the court, the judicial body, which convicted the accused of grave crimes.

Men of higher character never before composed a court for trial of any man charged with an offense against the laws of his country, or the

rules and articles of war. Their position and responsibility was largely different from that of a board of gentlemen assembled to hear *ex-parte* statements, clothed with no legal authority and with no responsibility. The majority of the committee base their report, as well as the bill accompanying it, upon the findings of a board of officers of the Army convened under the following order:

[Special Orders No. 78.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE.
*Washington, April* 12, 1878.

The following order has been received from the War Department:
An appeal has been made to the President, as follows:

"NEW YORK, *March* 9, 1878.

"To His Excellency RUTHERFORD B. HAYES,
"*President of the United States:*

"SIR: I most respectfully, but most urgently, renew my oft repeated appeal to have you review my case. I ask it as a matter of long delayed justice to myself. I renew it upon the ground heretofore stated, that public justice cannot be satisfied so long as my appeal remains unheard. My sentence is a *continuing sentence*, and made to follow my daily life. For this reason, if for no other, my case is ever within the reach of executive as well as legislative interference.

"I beg to present copies of papers heretofore presented, bearing upon my case, and trust that you will deem it a proper one for your prompt and favorable consideration.

"If I do not make it plain that I have been wronged, I alone am the sufferer. If I do make it plain that great injustice has been done me, then I am sure that you, and all others who love truth and justice, will be glad that the opportunity for my vindication has not been denied.

"Very respectfully, yours,

"FITZ-JOHN PORTER."

In order that the President may be fully informed of the facts of the case of Fitz-John Porter, late major-general of volunteers, and be enabled to act advisedly upon his application for relief in said case, a board is hereby convened, by order of the President, to examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said board, and to report, with the reasons for their conclusion, what action, if any, in their opinion, justice requires should be taken on said application by the President.

DETAIL FOR THE BOARD.

Major-General J. M. Schofield.
Brigadier-General A. H. Terry.
Colonel G. W. Getty, Third Artillery.
Major Asa B. Gardner, judge-advocate, recorder.

The board will convene at West Point, New York, on the 20th day of June, 1878, and is authorized to adjourn from time to time, and to sit in such place as may be deemed expedient.

By command of General Sherman:

E. D. TOWNSEND,
*Adjutant-General.*

Official:
L. H. PELOUZE,
*Assistant Adjutant General.*

After this board had been in session for some two months they came to the following conclusions:

"The evidence of bad animus in Porter's case ceases to be material in view of the evidence of his soldierly and faithful conduct. *But it is our duty to say that the indiscreet and unkind terms in which General Porter expressed his distrust of the capacity of his superior commander cannot be defended.* And to that indiscretion was due, in very great measure, the misinterpretation of both his motives and his conduct and his consequent condemnation.

"Having thus given the reasons for our conclusions, we have the honor to report, in accordance with the President's order, that, in our opinion, justice requires at his hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him—such restoration to take effect from the date of his dismissal from the service.

"Very respectfully, your obedient servants,

"J. M. SCHOFIELD,
"*Major-General United States Army.*
"ALFRED H. TERRY,
"*Brigadier-General United States Army.*
"GEO. W. GETTY,
"*Brevet Major-General United States Army, Colonel Third Artillery.*"

This board was an illegal body, unwarranted in law or by precedent. Their opinion should weigh no more than the opinion of any other three gentlemen. Their report shows clearly that they did not understand the duty they were to perform. They asked the President to set aside a court-martial in violation of law, to exercise a power that he did not have, and to do such acts as would restore Fitz-John Porter and give him pay for fifteen years when he performed no duty and was merely a citizen of the United States, deprived of the right to hold office even. Their whole report shows that it is not based upon the evidence that was before the court-martial, nor was it based upon the evidence that they themselves took, but is entirely in contradiction and contravention to such evidence. They, as intelligent men, whether lawyers or not, should have known that they had no power or authority to inquire into the evidence and proceedings of a court-martial, swear witnesses, take testimony, or to hear and determine any question of law or fact in connection with it. Their whole report is an assumption of power and an attempt to set themselves up above the judgment of a lawfully constructed court of sworn officers, the President of the United States, the Attorney-General, and the authorities of the government acting at the time that the court-martial decision was announced. It looks more like an attempt to open the doors of Congress for the restoration of persons who had been dismissed from the Army fifteen or twenty years ago who were fortunate enough to be educated by the government, but who failed to do their whole duty when their government demanded it.

The assumptions of this board are not borne out nor justified by the records and evidence in this case. How could they assume to know what evidence had weight on the court-martial, and what had not. The record does not give such information, and how could they obtain it. They assume that at the time the acts were committed that the witnesses who stood by, who saw and knew the facts, were not competent to give the facts as they knew them; but that after about sixteen or eighteen years the knowledge certainly comes to the witnesses, and that they can state facts clearer and better than they did at the time they transpired.

The whole appearance of this case as reported by this board would indicate that it was made up in order to introduce confusion and misconception into it.

It must be remembered that there is not now, nor has there been at any time, a charge that the court-martial that found Fitz-John Porter guilty in 1863 was not a legal court; that it did not have jurisdiction of the person and the case. No one ever claimed that Fitz-John Porter did not have a fair trial. No one will say that the gentlemen who tried him were unskilled in war or wanting in their knowledge of law; and now Congress is asked to not only declare that they were prejudiced—

that they found an innocent man guilty—and that Abraham Lincoln, the martyred President, wantonly and against the evidence, confirmed the action of the court-martial. Not only this, but that the second martyred President, James A. Garfield, who was on that court-martial, was prejudiced, without knowledge of military affairs, and wanting in the knowledge of law and the weight of testimony.

All of these things we are asked to do because of the persistency of this man before the country and Congress to have a verdict in effect set aside, and he be restored to the Army and a place which by his own conduct he disgraced.

Certain men in their letters say this man Porter was a brave officer. His bravery no one has questioned, but there are many instances cited in history where the bravest men have failed to perform their duty to their country in time of its greatest need, and where brave men have fallen in an evil hour on account of prejudice against their superior officers. This is but another instance of the same character—this second attempt for the restoration of this man to the Army by an act of Congress when the court and the condition of war have long since ceased to exist—when there is no longer a tribunal to hear and decide when the witnesses and actors are many of them dead or out of sight, when it is known to be impossible for the United States to produce important witnesses.

The pretended evidence newly discovered has not a shadow of relevancy to the offense charged, and if it had been introduced before the court-martial would have been no answer to the charge.

Criminal acts consist in intent and action combined. The intent and motive to the act is judged by the facts known to the party charged, and not by what he did not and could not know. Porter was charged with flagrant disobedience of proper orders. The reasons why he disobeyed must have been in his mind at the time of disobedience. Information acquired years after, even if true, of the force and condition of the enemy who stood in the way of success could not have been his motives for the act, and even if such information was before him at the time, it is neither defense nor excuse. If he was at the time certain that the obedience of his orders would have destroyed his command, still, as a soldier, it was his duty to obey. If he was certain that such obedience would destroy his corps, still, as a soldier, he was bound to obey. Occasions are not rare where a portion of a command must be sacrificed to bring about the general success, and the highest test of a good officer is toaccept such responsibility.

General Pope was responsible for the plan of the battle, Porter for the proper execution of the part assigned him. Success or failure was not in his decision. His duty was simple and clear, to march promptly and fight vigorously, as commanded by his superior. He did neither; and he is no more justifiable than a captain or sergeant, a corporal or private, who disobeys the lawful order of his superior. It is a new feature in military law that a subordinate may try to show as an excuse for disobedience that the movement ordered, even if carried out, would not have been a success. This is the introduction of opinions and guesswork as matter of evidence in defense. The inexorable yet reasonable severity of military law compels obedience and leaves consequences to him who gives the order. Any other rule defeats the possibility of combined operations on a large scale, and subjects grand strategic movements, always difficult in themselves, to the peril of the petulance, conceit, or lack of information of subordinate officers.

Nothing could more clearly set out the duty of subordinate officers

than was done in the order of General Washington, on the 10th of October, 1777, from army headquarters at Taomensing. He said:

It is not for every officer to know the principles upon which every order is issued, and to judge how they may or may not be dispensed with or suspended, but their duty to carry them into execution with the utmost punctuality and exactness. They are to consider that military movements are like the working of a clock, and they will go quickly, regularly, and easily, if every officer does his duty, but without it be as easily disordered, because neglect from any one, like the stopping of a wheel, disorders the whole. The general, therefore, expects that every officer will duly consider the importance of the observation. Their own reputation and the duty they owe to their country claims it of them, and earnestly calls upon them to do it.

It has been and should be considered the first duty of a good soldier to obey orders strictly; for disobedience there can be no valid excuse. A good soldier will always be in readiness to march at the sound of the enemy's guns.

I now call attention to the orders that were issued, and the evidence showing his disobedience of same. But that there may be a proper understanding of the case, it is necessary to know something in reference to the positions. General Pope being in command of the Army of Virginia, had withdrawn from or relinquished what is known in military parlance as his former line of operations and began his movement against Jackson on the evening of the day on which he sent the first order to Fitz-John Porter. General Hooker's division of Heintzelman's corps having moved along the railroad from Warrenton Junction towards Manassas Junction, and meeting Ewell's division of Jackson's forces at Bristoe Station in the afternoon, after a sharp fight drove him out in the direction of Manassas Junction. General Pope made his headquarters with this division. In his rear, at Warrenton Junction, was Porter's command, the gallant Fifth Army Corps, anticipating an attack from the Confederate forces on the morning of the 28th, and Hooker's command being nearly out of ammunition at the time, he issued the following imperative order at 6.30 p. m. to General Fitz-John Porter, and sent the same by Captain Drake De Kay, one of his (Pope's) aids-de-camp. The order is in the following language, which will be found on page 7 of the general court-martial record:

HEADQUARTERS ARMY OF VIRGINIA,
*Bristoe Station, August 27, 1862—6.30 p. m.*

GENERAL: The major-general commanding directs that you start at one o'clock to-night and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is. If Morrell has not joined you, send word to him to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight. I send an officer with this dispatch who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealeton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

By command of Major-General Pope:

GEORGE D. RUGGLES,
*Colonel and Chief of Staff.*

Major-General F. J. PORTER,
*Warrenton Junction.*

P. S.—If Banks is not at Warrenton Junction leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately. If Banks is not at the junction instruct Colonel Cleary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it.

By command of Major-General Pope:

GEORGE D. RUGGLES,
*Colonel and Chief of Staff.*

Drake De Kay, a witness on the stand before the court-martial and before this board, swears that he was the bearer of this order to Fitz-John Porter; that he delivered the order to Fitz-John Porter at nine o'clock and thirty minutes that evening. He was directed by Pope to stay with Fitz-John Porter and conduct his command along the road to Bristoe Station.

What was the result? He consulted with his officers. For what purpose? For the purpose of finding out if there were not some way to avoid the order and not for the purpose of executing it. What was his action? He issued no order at that time to his command; but he decided himself, after consultation, that he would not move at one o'clock but at three o'clock in the morning, a difference of two hours. Having to go nine miles and a half, a difference of two hours would count a great deal in the march of an army or in the march of a corps.

It will not do to say that General Porter did not have knowledge or information in reference to the necessity of his being present next morning at daylight, because the very order issued to him required him to be there at daylight; and why? Because an attack was expected; because the arrangement was so made that there was a necessity for his force being at Bristoe Station for the purpose of consummating the plans of the general in command.

Captain DRAKE DE KAY was then called by the government, sworn, and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state what position you hold in the military service?—Answer. First lieutenant of the Fourteenth Infantry.

Q. What position did you hold during the campaign of the Army of Virginia under the command of General Pope?—A. Aid-de-camp to General Pope.

Q. Did you, or not, on the 27th of August last, bear a written order from Major-General Pope to Major-General Porter, who was then, I believe, at Warrenton Junction?—A. I did.

Q. Do you remember distinctly the character of that order, and would you be able to recognize it again upon having it read to you?—A. I did not read it.

Q. Did you, or not, after its delivery to General Porter, learn from him its character?—A. I was aware of its character by word of mouth, either from General Pope or from his chief of staff.

Q. Will you state its character as you understood it?—A. That he was to proceed at one o'clock that night to move up to Bristoe Station with his command.

Q. Do you mean at one o'clock on the morning of the 28th of August?—A. Yes, sir.

Q. At what hour of the 27th of August did you deliver this order to General Porter?—A. Between nine o'clock and half-past nine p. m.; I think about half-past nine; I could not say within half an hour.

Q. Had you any conversation with General Porter at the time in relation to the order or the execution of the order by him?—A. Yes, sir; some conversation.

Q. Will you please state it, as far as you can recall it?—A. I arrived, as I have said, about half-past nine o'clock, at his tent, and found General Porter and two or three generals there—General Sykes and General Morrill, and, I think, General Butterfield, though I am not sure whether he came in afterward or not. I handed General Porter the order, which he read and then handed to one of the generals, saying, as he did so, "Gentlemen, there is something for you to sleep upon."

I then said that the last thing that General Pope said to me on leaving Bristoe Station was that I should remain with General Porter and guide the column to Bristoe Station, leaving at one o'clock, and that General Pope expected him certainly to be there by daylight, or relied upon his being there by daylight; something of that nature; those may not be the exact words; I only give to the best of my recollection, of course. General Porter then asked me how the road was. I told him that the road was good, though I had had difficulty in getting down on horseback, owing to the number of wagons in the road; but I told him I had passed the last wagon a little beyond Catlett's Station from this direction. I told him that as they were moving slowly he would probably be up with them by daylight. I also stated to him that his infantry could take the railroad track, as many small squads of men had gone up that way. These small squads, I would state here, though I did not state that to

General Porter, were stragglers from Hooker's corps; I should think some six or eight hundred of them, which we passed in going down to Bristoe Station; they all took the railroad track as the shortest and easiest road.

Q. What remark, if any, did General Porter make either to you or to the generals with him, in reply to this statement in reference to the road and the expectation of General Pope?—A. He stated—I do not think to me; he spoke generally to all who were in the tent—that his troops had just got into camp; that they had been marched hard that day; that they would be good for nothing if they were started at that time of night; that if their rest was broken they would be good for nothing in the morning on coming up with the enemy.

Q. Did you or not make known to him that you were there for the purpose of conducting him under the order of General Pope?—A. I did.

Q. Did he, or not, at the moment, announce any purpose either to obey the order or not to do so?—A. I do not recollect precisely.

Q. From the remarks made by General Porter in your hearing, in reply to these statements of yours, was or was not the impression made upon your mind that it was not his purpose to march in obedience to the order?

(Question objected to by the accused.

The judge-advocate stated that he merely wished to arrive at the fact whether there was any determination made known to the witness in regard to this order in any way; he was not particular as to the form of the question to be asked.

The accused withdrew his objection.)

A. There was no order issued to my knowledge, of course, one way or the other. That would have been done through General Porter's assistant adjutant-general. I can only say that I was aware of the determination not to start until daylight, inasmuch as I laid down and went to sleep.

Q. Do I or do I not understand you, then, to say that there was an evident determination on the part of General Porter not to march until daylight?—A. There was.

Q. Have you any knowledge as to the time at which his troops had arrived at Warrenton Junction?—A. Only the fact that the regulars—Sykes's division—were in camp at Warrenton Junction at about ten o'clock in the morning of that day, which fact I am aware of from having visited several officers of my regiment in their camp.

Q. These regulars were a portion of General Porter's command, were they not?—A. Yes, sir.

Q. Have you any knowledge how far the troops under General Porter had marched on that day?—A. I have not.

Q. What was the character of the night of the 27th of August?—A. To the best of my recollection, it was a cloudy night, but not rainy.

Q. What was about the distance between Warrenton Junction and Bristoe Station?—A. I supposed it to be ten miles; they say nine miles.

Q. What was the distance from Bristoe Station to Catlett's Station, when you passed the last of the wagons?—A. I cannot tell you exactly; six miles, I should think.

Q. At what hour did you pass the last of those wagons?—A. Half past eight p. m., I should think.

Q. Did you remain over night, and wait until the march of General Porter's command the next day?—A. I did.

Q. At what hour, in point of fact, did he move from Warrenton Junction?—A. I should think the head of the column left about four o'clock in the morning; I am not positive about the hour.

Q. At what rate did the command march after it left Warrenton Junction?—A. I could not say at what rate. We started at of about four o'clock in the morning, and marched along quietly, without any apparent haste, meeting with no obstruction or detention, except that arising from the wagons we found in the road. The head of the column arrived at Bristoe Station about ten o'clock, I should judge.

Q. At what point did you overtake the wagons, and how many of them do you suppose there were?—A. I do not recollect. There was a large park of wagons near Warrenton Junction—about half way between Catlett's Station and Warrenton Junction—which left for Bristoe Station at daylight. We overtook those wagons. They were in park when I passed down to Warrenton Junction the previous evening; therefore I cannot tell when we overtook the end of the train which I had passed near Catlett's Station the evening before.

Q. What is the meaning of the term "in park"?—A. In camp.

Q. Had General Porter's command marched at one o'clock in the morning would he or would he not have passed those wagons in camp?—A. He would have passed them in camp, probably.

Q. Was or was not the march throughout at the usual rate at which troops move, or was it slower?—A. It was at the rate at which troops would move if there was no necessity for rapid movement.

General Sykes, one of Porter's own division commanders, testified, on page 170 of the general court-martial record:

Brigadier-General GEORGE SYKES called by the accused and sworn, and examined as follows:

By the ACCUSED:

Question. Will you state your rank and position in the Army?—Answer. I am a brigadier-general of volunteers and a major of regulars.

Q. To what corps were you attached in August last?—A. I commanded a division under General Fitz-John Porter, of the Fifth Army Corps.

Q. If you were in General Porter's tent on the evening of the 27th of August, at the time when Captain De Kay brought General Porter an order from General Pope, will you state the conversation which then occurred, or immediately afterward, as nearly as you can recollect it, and what was done about that order?—A. *About ten p. m., on the 27th of August, General Porter sent for me; we were then encamped at Warrenton Junction, Virginia. In his tent I met General Morell, General Butterfield, and Captain Drake De Kay. General Porter informed me that he had received an order by the hands of Captain De Kay, directing his corps to march at one o'clock a. m. on the 28th.* We talked it over among ourselves, and thought nothing was to be gained by moving at midnight or one a. m. rather than at dawn. I was very positive in my opinion, and gave General Porter my reasons.

General Sykes's command arrived at Warrenton Junction that morning at ten o'clock. They had rested from ten o'clock, and would have rested until one o'clock at night. The last of General Morell's division got in there late in the evening, so that the divisions would have had rest, ample and sufficient, for a march of nine and a half miles, especially when there was any necessity for it.

General Morell says, on page 138 of the general court-martial record:

Question. Do you know anything of an order received by General Porter from General Pope on the evening of the 27th of August?—Answer. Yes, sir. I was present when he received one brought by Captain De Kay.

Q. About what hour?—A. About ten o'clock.

Q. Who else, as you recollect, was present at the time?—A. General Sykes and General Butterfield were either present or came in a very few minutes after. I do not know which.

Q. State what occurred at the time of the receipt of the order, or immediately afterward, between the accused and yourself and the other generals.—A. General Porter said to us that he had received this order to march at one o'clock that night. We immediately spoke of the condition of our troops—they being very much fatigued—and the darkness of the night, and said that we did not believe we could make any better progress by attempting to start at that hour than if we waited until daylight. After some little conversation, General Porter said: "Well, we will start at three o'clock—get ready." I immediately left his tent and went back to my division and made preparations for moving.

Porter's corps was composed of two divisions, Sykes's and Morell's. One of the excuses for not obeying this order is that it was dark; another is that there were wagons in the road, and therefore the march could not be completed. You will find on page 106 of the general court-martial proceedings the evidence of Colonel Frederick Myers, of the Quartermaster's Department, who is now dead:

Lieutenant-Colonel FREDERICK MYERS was then called by the government and sworn, and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state to the court in what capacity you served in the Army of Virginia, under Major-General Pope, during its late campaign in July and August last?—Answer. I was chief quartermaster to General McDowell.

Q. Where were you on the night of the 27th of August last?—A. I was with the trains of the Army, about a mile and a half from where General Hooker had his battle on the 27th.

He was with the trains about a mile and a half from where General Hooker had the battle on the 27th. General Hooker's battle on the

27th was at Bristoe Station, where these troops were to be marched that night.

Q. Did you, or not, receive any instructions from General Pope on that day relating to your train along the road from Warrenton Junction to Bristoe Station? If so, state what they were.—A. I was ordered to move the trains in rear of General Hooker.

Away from Warrenton Junction; not in the direction of Warrenton Junction.

Just before dark General Pope with his staff rode up, and I reported to him that General Hooker was in action ahead of me, and asked him if I should go into park with my trains. He replied that I could do so, or go on, as I thought best.

Q. What did you do; did you go into park, or did you continue on?—A. *I went into park, and gave directions to all the quartermasters to go into park.*

Q. At what hour on the following morning were those trains upon that road put in motion?—A. *The head of the train commenced moving just at daylight.*

Q. What was the condition of the road between Warrenton Junction and Bristoe Station at that time, so far as regards the passage of wagons, artillery, &c.?—A. *It was in excellent condition at that time.*

Q. Do you remember the character of that night—the night of the 27th of August? If so, will you please state it?—A. I was up nearly all that night. It was quite dark; there was no moon.

Q. Did the night change in its character toward the morning, or was it the same throughout?—A. It was a dark night. I could not state about it toward morning particularly.

Q. In view of the condition of the road as you have described it, and also the character of the night, was or was not the movement of troops along that road practicable that night?—A. I do not know of anything to hinder troops moving along the railroad there. There was a road running each side of the railroad. I should think it would have been easy for troops to move along there, although I may be mistaken in that.

Thus, from the testimony of Colonel Myers, then in charge of the wagons that it is claimed were in the road, it is clear he ordered them to go into park, that is to go into camp, to keep off the road; that they did so, and that the head of the train entered the road the next morning at daylight, and not until daylight. At one o'clock General Porter was to start with his command, and this evidence discloses the fact that General Porter took no steps whatever except merely to send out officers, and he dispatched two aids to Pope for the purpose of asking Pope to clear the road for him. He took no steps whatever to clear the road himself. It did not rain; the moon did not shine, but it was starlight, say the witnesses, nearly all of them, except when a cloud would obscure for a time. There were roads on either side of the railroad. There was a railroad from Warrenton Junction to Bristoe Station, with a wagon-road on either side, say the witnesses. They ran the trains behind Cedar Run. Those trains at the time they were running might have prevented the troops from marching on the railroad track; but the trains were run back there before two o'clock. So the testimony of the person in charge shows. Then the railroad was no obstruction; but there were wagons and the night was dark. General Butterfield, when he was sworn, stated, on page 179 of the general court-martial record:

Brigadier-General DANIEL BUTTERFIELD called by the accused and sworn, and examined as follows:

By the ACCUSED:

Question. What was your rank in the Army of Virginia, commanded by General Pope?—Answer. Brigadier-general of volunteers and lieutenant-colonel of the Twelfth United States Infantry.

Q. Do you remember whether you were present on the evening of the 27th of August last at the headquarters of General Porter when an order was received by him, through Captain De Kay, from General Pope?—A. I was present a few moments after it was received.

Q. Will you state what was said by General Porter in relation to that order, and what the order was?—A. The order, I believe, was for General Porter to move his for-

ces at one o'clock in the morning to Bristoe Station. He handed the order to General Morell, or to General Sykes, who were present, *and said there was a chance for a short nap*, or something of that sort (I do not remember the exact words), indicating that there was but little time for preparation. General Sykes or General Morell, I do not remember which (one or both of them), spoke with regard to the fatigue our troops had endured, the darkness of the night, and the fact that, in their judgment, the troops would be of more service to start at a later hour than they would be to start at the hour named. In reply to these remarks General Porter spoke rather decidedly, that there was the order; it must be obeyed; that those who gave the order knew whether the necessities of the case would warrant the exertions that had to be made to comply with it. I do not state that as his exact words, but as the substance of what he said. Captain De Kay, who brought the order, was then present, and was asked some questions about the road. He stated that it was very dark, and that the road was full of teams. General Sykes, I think, suggested that it would be impossible for us to move at the hour named, if the road was full of teams; that they could not find the way. General Porter called two aids *and sent them off to investigate the condition of the road, and to ask General Pope to have the road cleared so that we could come up.*

He sent off two aids, not two men to clear the road, but sent two aids through to Bristoe Station to ask General Pope to have the road cleared for him, so that he might come up the next morning. General Butterfield continues:

Q. Did you see the order of the 27th from General Pope, or know anything about the urgency of its terms?—A. I did not read it.

Q. Did you learn of Captain Drake De Kay that General Pope had taken measures to have the road cleared?—A. I did not.

Q. Can you state that, in point of fact, the road had not been cleared by General Pope's orders, or that at one o'clock at night and until later in the morning the road was all cleared; and can you state that the wagons that obstructed the road when you passed had not moved on to the road after daylight?—A. I cannot; I have no knowledge upon that subject.

The fact is, and the evidence discloses it, that General Porter did not leave his tent or his headquarters until after sunrise that morning, and a captain of an escort company stood in front of his headquarters, from three o'clock in the morning waiting until sunrise and then got his breakfast before General Porter himself started from his headquarters, although this order was imperative; and after they had started the wagons that had been parked by the roadside during the night under the order of Colonel Myers, as he says, came into the road at daylight after these troops came on to it. Of course the wagons entered the road for the purpose of going to Bristoe Station, and then they were an obstruction. This shows that there was no attempt whatever made by Fitz-John Porter to clear the road or to move his troops in the direction of Bristoe Station at night when the road had been cleared by parking the wagons.

Further, this evidence of General Butterfield shows another fact: it shows that General Porter did not explain this order to his commanders, because General Butterfield swears that he did not know what the order was, except that they were to move at one o'clock at night, and the order was changed to three o'clock by Fitz-John Porter. He did not explain to his commanding officers that General Hooker had been in a fight, and that General Pope wanted his Army corps there the next morning, because he expected an attack from the Confederate General Jackson. He made no such explanation; hence Sykes and Morell and Butterfield thought it made no difference so that they got there the next morning. He did not read the order to them, made no explanation whatever, except merely to inquire what their desires were in reference to moving that night.

Francis S. Earl, the assistant adjutant-general of General Morell, swears as follows:

Question. When did you, as acting assistant adjutant-general for Major-General Morell, on the 27th of August, first receive intimation that you were to move the next

morning?—Answer. That was the day we moved to Warrenton Junction; I knew nothing of it until the next morning.

Q. About daybreak?—A. The order came to General Morell that we were to move in the morning; that was all I knew—that we were to move in the morning.

Q. When did you receive the first intimation that you were to move on the morning of the 28th?—A. I could not say whether it was the night before or whether it was during the night. I think it must have been before, because I knew we were to move at three o'clock in the morning.

Q. Were you up at three o'clock?—A. Yes; I was up at that time, and before, probably.

Q. You are quite positive you were?—A. Yes, sir.

Q. Have a distinct recollection of it?—A. Yes; I recollect being up at that time.

Q. At what time did you arrive at Bristoe Station?—A. I should judge somewhere about ten o'clock; between nine and ten.

Q. Do you know of any orders having been given the night before, or any effort made to clear that road from Warrenton Junction to Bristoe Station?—A. No, sir.

Q. From your position, would you have been likely to have known?—A. If I had really been acting as assistant adjutant-general of division, or feeling that I was in that position, I probably may have known of it.

Q. You considered you were acting in that capacity?—A. I considered myself more acting as an aid to General Morell, because I had not been announced as assistant adjutant-general.

Q. Who was acting as assistant adjutant-general?—A. Nobody but myself; he so considered me, though I had not been announced.

The adjutant-general of General Morell, by whom the order should have been issued to the division, and through whom it should have passed, knew nothing about the movement until the next morning; and that was the manner in which the orders of General Pope were executed by Porter, who claimed that he did not in any sense whatever, refuse to obey the orders of his superiors.

General Chauncey McKeever, chief of staff of General Heintzelman, on page 151 of the board record, as it is called. The records are distinguished between the general court-martial record and the board record. General McKeever says:

Question. If a peremptory order had been received at Warrenton Junction to move from that place to Bristoe at 1 a. m. on the night of the 27th and 28th of August, is it your opinion, as a military man, that the troops at Warrenton could have been put in motion on the road to Bristoe in order to comply with such a command?—Answer. They could have been put in motion, I presume. I know nothing to prevent their being put in motion.

Q. Do you recollect about what time it was daylight on the 28th of August?—A. I should think about 4 o'clock; maybe a little later—not much.

This is the fact; and if the wagons had been blocked like an iceberg on the road, it was his duty to call his troops up and attempt to make the march. If he failed, then he would not have failed on account of bad intentions; it would have been by reason of impossibilities. But an officer who receives an order must attempt at least to comply with it; and when he does not so attempt in any sense, he then cannot give excuses if it has not been executed. The excuse that justifies the non-execution of a military order is when you attempt to execute it and the impossibility develops itself. It is not that you can find imaginary obstructions, not that you can yourself make up obstructions to the execution of an order, but you must attempt to execute and find the obstructions to its execution, or you fail in the performance of your duty.

Colonel Robert E. Clary, called by accused, swears that he received a note from General Porter about ten o'clock to run the railroad trains east beyond Cedar Run; and in answer to questions says, page 119, G. C. M.:

Question. You speak of pushing forward the trains. Do you mean the trains upon the railroad, or ordinary wagon trains?—Answer. I mean railroad trains loaded with our own stores, and I think some sick and wounded.

Q. In your opinion, could or could not General Porter, after the receipt of his order to move, which receipt was at 9.30 p. m. of the 27th of August, have cleared the road entirely of wagons by one or two o'clock that night, so that his march would not have been much impeded?—A. I think the troops could have passed over during the night, had a sufficient force been sent in advance to have cleared the road of its obstructions, which, at the time I passed over it, extended only three miles, I think. When I passed over the road it was between two and three o'clock in the morning; what the obstructions had been previously to that time I am unable to say.

The examination by the judge-advocate here closed.

Examination by the COURT:

Q. Will you state whether at one o'clock the character of the night and the state of the road were such as, in your judgment, to render practicable the march of General Porter's troops to Bristoe Station to arrive at or about daylight?—A. Not without the preliminary steps which I have previously stated ought to have been taken.

Q. Were or were not the first three or four miles of the road from Warrenton unobstructed?—A. They were, as I passed over it.

## Solomon Thomas, of the Eighteenth Massachusetts Regiment, Martindale's brigade, being a part of Morell's division, swears, on page 841 of the board record, as follows:

Question. On the 27th of August where were you?—Answer. We were moving on the Warrenton road toward Bristoe Station. I should think that we were encamped on that night some six or eight miles from Bristoe Station. We went in before sundown; probably the sun was an hour or an hour and a half high when we halted there.

Q. When did you move from there?—A. I was corporal of the guard that night, and was ordered to wake the men at one o'clock, which I did; and we were formed and moved out from our camp immediately after one o'clock.

Q. At what time did you start on your march?—A. We then started immediately from that, and marched a mile, probably, when we were halted.

Q. How long did you remain there before you proceeded on your journey?—A. I know at nine o'clock we were still there. We had halted in the first place expecting to stop for a moment, and halted in position. Then we were ordered to rest at will, and did so, and then were ordered to lie down, and then we lay down.

Q. That was the morning of the 28th?—A. Yes, sir; and lay in that position, as we felt disposed, until, I should think—according to the best of my judgment it was ten o'clock before we were called to company. Then we started and marched for Bristoe Station.

Q. Do you recollect what the character of that night was, the 27th, and morning of the 28th of August?—A. I do. I recollect the roads were in good condition, and that as we moved out there was no obstruction whatever in our way.

Q. You were wounded on the 30th?—A. On the 31st.

Why was this delay? The command to which this witness belonged had marched there in the evening; they were ready to move at one o'clock; they remained there until nine o'clock in the morning without any orders, and then moved out and forward. It cannot be said that the wagons were in the road; it cannot be that artillery was in the way, for, if a battle was going on, or if there were the expectation of a battle, infantry could move through woods and go in single file. They can move anywhere where a man can go on horseback, if it be absolutely necessary.

In the board record, page 583, will be found the evidence of William W. Macy:

WILLIAM W. MACY, called by the recorder, being duly sworn, testified as follows:

Direct examination:

Question. Where do you reside?—Answer. Winchester, Indiana.

Q. Were you in the military service of the United States in August, 1862; if so, in what capacity?—A. I was in the military service at that time; a sergeant, I believe.

Q. What regiment?—A. Nineteenth Indiana Volunteers, Gibbon's brigade, King's division.

Q. When you finally left the service, what rank did you hold?—A. I held the rank of captain, A Company, Twentieth Indiana, our regiment having become consolidated.

Q. Where were you on the 27th of August, 1862?—A. With Gibbon's brigade, on the march most of the day from Sulphur Springs toward the old Bull Run battle-ground.

Q. How long did your brigade continue its march that day?—A. About ten o'clock, I think, or half past ten that night.

Q. You then arrived at what place, as near as you can recollect?—A. I think it was called New Baltimore. We laid near a little town.

Q. What was the character of that night—the night of the 27th and 28th of August?—A. *Rather a dark night; starlight dark night.*

Q. Do you know what the character of that night was toward morning?—A. I am a little indistinct as to just the time. I was up at some time in the after part of the night.

Q. Once, or more than once?—A. Once that I recollect very distinctly, and I think only once.

Q. What was the character of the night then, so far as distinguishing objects?—A. I could see how to get a little way from the camp. I could see where the men laid as I went past the line where the soldiers were lying without running over them.

Q. How far could you see?—A. I do not know that I could state how far I could see to distinguish things. I could see when I passed the wagon-trains enough to stay away from the horses' heels. I could see that the wagon-teams were hitched up.

Q. In marching that night up to ten o'clock, what difficulty, if any, did you experience on account of the character of the darkness of the night?—A. Most too dark to march pleasantly. We marched many nights as dark though; some nights that were a good deal darker than it was that night we were on the march; but of course it is unpleasant marching after night.

Q. Your regiment in the march—how was it as to keeping its formation?—A. Could keep the ranks, as far as that was concerned.

Q. What was the character of the roads, as to whether muddy or the reverse, on the night of the 27th of August?—A. They were not muddy unless we ran into a branch.

This evidence is corroborated by William E. Murray, of Company C, Nineteenth Indiana Volunteers; also by Samuel G. Hill, of the same company and regiment; also by Capt. William M. Campbell, of that company, who marched that night until ten o'clock across that country, and made the march without interruption or obstruction.

On page 597 of the board record you will find that sustained by J. H. Stine, Company C, Nineteenth Indiana, and Col. Rufus Daws, of the Sixth Wisconsin, Gibbon's brigade, swears that he marched with his regiment until after dark, and also *marched* before daylight, and experienced no difficulty.

General William Birney, commanding the Fifty-seventh Pennsylvania, swears, page 683, board record, that he marched this regiment the night of the 27th from Greenwich, and arrived at Bristoe at an early hour, say an hour after daylight next morning.

General Thomas F. McCoy, of the One hundred and seventh Pennsylvania, board record, page 640, swears that he marched with his command all night, and had no difficulty whatever, and that his whole division marched all night.

Thus a part of the command show that they marched during that night, and had no difficulty whatever in making it.

On page 860 of the board record Maj. J. H. Duvall testifies that he rode from Warrenton Junction by way of Catlett's Station to Bristoe, near Manassas Junction, to Pope's headquarters on the night of the 27th, arriving there at three o'clock in the morning, and met with no difficulty on the road whatever. This was the same road that Porter was to travel over.

Then take the case of General Jackson, the Confederate general. Henry Kyd Douglass, of the Confederate army, one of General Jackson's staff officers, an inspector, &c., testifies before this board that on the night of the 27th August, 1862, General Jackson moved his entire army from Manassas Junction to a line between Centreville and Groveton, and there took his position. General Jackson, of the Confederate army, having heart in his cause, moved out of the way of Pope's troops on the night of the 27th from Manassas Junction around to Centreville and

back between that and Groveton to a line, with his whole army, bag and baggage, ammunition, and everything else. If a Confederate general could do that, why not a Union general?

It will not do to say that the darkness would prevent it, for the same kind of darkness would have equally affected the Confederate army.

Board record, page 822, General Jubal A. Early, a Confederate general, swears that he marched his command on the night of the 27th of August and experienced no difficulty whatever in so doing.

Let me call the attention of the Senate to the evidence of Lieutenant-Colonel Buchanan, of the Third Indiana Cavalry, on page 603 of the board record, in reference to Porter's movement from Warrenton Junction to Bristoe. He testifies as follows:

Question. What conversation had you with General Porter before he started off to Bristoe Station?—Answer. On the evening before he started somebody gave me an order to be in readiness to move at three o'clock in the morning. I was in front of General Porter's headquarters at three o'clock in the morning, but I saw no one until after the break of day. Then some one came to me and told me to let the men get their breakfasts and let their horses be fed. That was done, and I immediately went back to the place I occupied. Some time afterward, after sunrise, I saw General Porter. I wanted to go back to Fredericksburgh to my regiment. I only had about ninety men with me, and I expected to go back the day before. I rode out with him in the woods, where he was in camp, until we got into an open field. He asked me to send a detachment of the command I had forward to clear the road toward Bristoe Station—

That, mark you, is away after sun-up. So that this man who had a detachment of ninety cavalry was ordered to send part of that cavalry to clear the road, when Porter had over thirteen thousand strong and stalwart men, infantry and artillery, to move along and to put the wagons out of the road—

He asked me to send a detachment of the command I had forward to clear the road toward Bristoe Station two or three miles. This was done. I waited some little time, and the infantry began to move—

Mark you, this was after sunrise; he was there at Porter's headquarters until after sunrise, and not until he had eaten his breakfast, after he had fed his horses and went into an open field and got back again, did the infantry begin to move. Not at three o'clock in the morning, but after sunrise the first movement was made by the troops of Porter—

I waited some little time, and the infantry began to move. About that time he handed me a letter, and directed me to give it to General Burnside, and told me I could go. I started toward Fredericksburgh; he sent an aid after me and brought me back, and told me he was apprehensive that I might be captured. He told me to say to General Burnside—I cannot get his language—but the idea was that there was no disaster that was very threatening as yet, and he hoped for the best.

We desire to call attention to the character of letters he wrote to General A. E. Burnside, criticising his commanding officer; and this he commenced with the first order he received from General Pope. On this point we present a letter written on the 26th day of August to General Burnside, in connection with an order showing that on the 26th, when he first received orders, he at that time commenced his assaults upon General Pope:

[No. 16.]

FROM ADVANCE, 11.45 P. M., *August* 26,
*Received August* 27, 1862.

Major-General BURNSIDE:

Have just received orders from General Pope to move Sykes to-morrow to within two miles of Warrenton, and to call up Morell to same point, leaving the fords guarded by cavalry. He says the troops in rear should be brought up as rapidly as possible, leaving only a small rear guard at Rappahannock Station, and that he cannot see

how a general engagement can be put off more than a day or two. I shall move up as ordered, but the want of grain and the necessity of receiving a supply of subsistence will cause some delay. Please hasten back the wagon sent down, and *inform McClellan that I may know I am doing right.* Banks is at Fayetteville; McDowell, Sigel, and Ricketts at and immediately in front of Warrenton; Reno on his right; Cox joins to-morrow, Sturgis next day, and Franklin is expected. So says General Pope.

F. J. PORTER,
*Major-General.*

HEADQUARTERS ARMY OF VIRGINIA,
*Warrenton Junction, August 26, 1862—7 o'clock p. m.*

GENERAL: Please move forward with Sykes's division to-morrow morning through Fayetteville to a point two and a half miles of the town of Warrenton, and take position where you can easily move to the front, with your right resting on the railroad. Call up Morell to join you as speedily as possible, leaving only small cavalry forces to watch the fords. If there are any troops below, coming up, they should come up rapidly, leaving only a small rear guard at Rappahannock Station. You will find General Banks at Fayetteville. I append below the position of our forces, as also those of the enemy. I do not see how a general engagement can be postponed more than a day or two.

McDowell, with his own corps, Sigel's, and three brigades of Reynolds's men, being about thirty-four thousand, are at and immediately in front of Warrenton; Reno joins him on his right and rear, with eight thousand men, at an early hour to-morrow; Cox, with seven thousand men, will move forward to join him in the afternoon of to-morrow; Banks, with six thousand men, is at Fayetteville; Sturgis, about eight thousand strong, will move forward by day after to-morrow; Franklin, I hope, with his corps, will, by day after to-morrow night, occupy the point where the Manassas Gap Railroad intersects the turnpike from Warrenton to Washington City; Heintzelman's corps will be held in reserve here at Warrenton Junction until it is ascertained that the enemy has begun to cross Hedgeman's River. You will understand how necessary it is for our troops to be in position as soon as possible. The enemy's line extends from a point a little east of Warrenton Sulphur Springs around to a point a few miles north of the turnpike from Sperryville to Warrenton, with his front presented to the east, and his trains thrown around well behind him in the direction of Little Washington and Sperryville. Make your men cook three days' rations and keep at least two days' cooked rations constantly on hand. Hurry up Morell as rapidly as possible, as also the troops coming up in his rear. The enemy has a strong column still further to his left toward Manassas Gap Railroad, in the direction of Salem.

JOHN POPE,
*Major-General Commanding.*

Major-General FITZ-JOHN PORTER,
*Commanding Fifth Army Corps.*

This order of Pope on the 26th shows that Porter was thus early notified of what was expected.

HEADQUARTERS ARMY OF VIRGINIA,
*Warrenton Junction, August 27, 1862—4 o'clock a. m.*

GENERAL: Your note of eleven p. m. yesterday is received. Major-General Pope directs me to say that under the circumstances stated by you in relation to your command he desires you to march *direct to this place* as rapidly as possible. The troops behind you at Barnett's Ford will be directed by you to march at once direct to this place or Weaverville, without going to Rappahannock Station. Forage is hard to get, and you must graze your animals as far as you can do so. The enemy's cavalry has intercepted *our railway communication near Manassas*, and he seems to be advancing with a heavy force along the Manassas Gap Railroad. We will probably move to attack him to-morrow in the neighborhood of Gainesville, which may *bring our line further back toward Washington*. Of this I will endeavor to notify you in time. You should get here as early in the day to-morrow as possible, in order to render assistance should it be needed.

I am, general, very respectfully, your obedient servant,

GEO. D. RUGGLES,
*Colonel and Chief of Staff.*

Major-General F. J. PORTER,
*Commanding Fifth Army Corps.*

[No. 19.]

WASHINGTON, 27TH, P. M.

To General BURNSIDE:

Morell left his medicine, ammunition, and baggage at Kelly's Ford. Can you have it hauled to Fredericksburgh and stored? His wagons were all sent to you for grain and ammunition. I have sent back to you every man of the First and Sixth New York Cavalry, except what has been sent to Gainesville. I will get them to you after a while. Everything here is at sixes and sevens, and I find I am to take care of myself in every respect. *Our line of communication has taken care of itself, in compliance with orders.* The army has not three days' provision. *The enemy captured all Pope's and other clothing; and from McDowell the same, including liquors.* No guards accompanying the trains, and small ones guard bridges. The wagons are rolling on, and I shall be here to-morrow. Good night!

F. J. PORTER,
*Major-General.*

We call attention to these letters to show that, prior to his receiving any order from Pope whatever to move forward to Bristoe Station, these criticisms were going on in his mind, and he was communicating to General Burnside all the time about the commander of the Army. Speaking of the capture of Pope's clothing and McDowell's clothing and whisky, was a criticism showing a disposition to make sport of these generals. This alleged capture turns out, however, to be untrue.

Now follows the letter delivered by Colonel Buchanan. This was the second letter, Porter having sent one August 26, 11.45 p. m.:

WARRENTON JUNCTION, *August* 27, 1862—4 p. m.

General BURNSIDE, *Falmouth:*

I send you the last order from General Pope—

That is the order he had received before, not this 6.30 order that he had received the night before, but another order directing him to move up the troops—

which indicates the future, as well as the present. Wagons are rolling along rapidly to the rear, as if a mighty power was propelling them. I see no cause for alarm, though I think this order may cause it. McDowell moves on Gainesville, where Sigel now is. The latter got to Buckland bridge in time to put out the fire and kick the enemy, who is pursuing his route unmolested to the Shenandoah, or Loudoun County. The forces are Longstreet's, A. P. Hill's, Jackson's, Whiting's, Ewell's, and Anderson's (late Huger's) divisions. Longstreet is said by a deserter to be very strong. They have much artillery and long wagon trains. The raid on the railroad was near Cedar Run, and made by a regiment of infantry, two squadrons of cavalry, and a section of artillery. The place was guarded by nearly three regiments of infantry and some cavalry. They routed the guard, captured a train and many men, destroyed the bridge, and retired leisurely down the road toward Manassas. It can be easily repaired. No troops are coming up, except new troops, that I can hear of. Sturgis is here with two regiments. Four were cut off by the raid. The positions of the troops are given in the order. No enemy in our original front. A letter of General Lee, seized when Stuart's assistant adjutant-general was taken, directs Stuart to leave a squadron only to watch in front of Hanover Junction, &c. Everything has moved up north. I find a vast difference between these troops and ours. But I suppose they were new, as they to-day burnt their clothes, &c., when there was not the least cause. I hear that they are much disorganized, and needed some good troops to give them heart, and, I think, head. *We are working now to get behind Bull Run, and, I presume, will be there in a few days, if strategy don't use us up. The strategy is magnificent, and tactics in the inverse proportion. I would like some of my ambulances. I would like, also, to be ordered to return to Fredericksburg and to push toward Hanover, or, with a large force to strike at Orange Court-House. I wish Sumner was at Washington, and up near the Monocacy with good batteries. I do not doubt the enemy have large amounts of supplies provided for them, and I believe they have a contempt for this Army of Virginia. I wish myself away from it, with all our old Army of the Potomac, and so do our companions.* I was informed to-day by the best authority that, in opposition to General Pope's views, this army was pushed out to save the Army of the *Potomac, an army that could take the best care of itself.* Pope says he *long since wanted to go behind the Occoquan.* I am in great need of ambulances, and the officers need medicines, which, for want of transportation, were left behind. I hear many of the sick of my corps are in houses on the road very sick. I think there

is no fear of the enemy crossing the Rappahannock. The cavalry are all in the advance of the rebel army. At Kelly's and Barnett's fords much property was left, in consequence of the wagons going down for grain, &c. If you can push up the grain to-night please do so, direct to this place. There is no grain here to-day, or anywhere, and this army is wretchedly supplied in that line. Pope says he never could get enough. Most of this is private.

F. J. PORTER.

But if you can get me away, please do so. Make what use of this you choose, so it does good.

F. J. P.

There is a letter written on the very evening that Porter received the order to support General Pope, in which he gives the most discouraging account possible for the purpose of demoralizing our Army and discouraging our commanders; and at the same time he says that "strategy is magnificent, and tactics in the inverse proportion," showing that he has a contempt for the Army and contempt for the commanding officer. He presents that to General Burnside. General Burnside sends it to Washington, as a proper officer should have done, that they might see what was going on. In the conclusion he says "please"; he supplicates, he begs. Please do what? "Please get me out of this." Out of what? He had not got his order to fight. What does he want to get out of? Out of the Army of Virginia. Showing by this very letter that he started in with this command under General Pope determined to criticise the Army, determined to criticise its movements, determined to be hostile to his commanding general, and determined to be disobedient if he could do it without being detected in violating the law. He begged to be taken away.

We call attention now to the testimony.

General Pope, the commander of that Army, testified as follows, pages 12 and 13, general court-martial:

Major-General JOHN POPE was called by the government, sworn and examined, as follows:

By the JUDGE-ADVOCATE:

Question. Will you state to the court what position you occupy in the military service of the United States?—Answer. I hold a commission as brigadier-general in the Regular Army, and as major-general of volunteers.

Q. What was your position and command, and what the field of your operations on the 27th of August last?—A. Do you mean my military position as commander?

Q. Yes, sir.—A. I commanded the Army of Virginia, which, as originally constituted consisted of the army corps of McDowell, Banks, and Fremont. These, by the 27th of August, had been re-enforced by a portion of General Burnside's command, by General Heintzelman's corps, and on the morning of the 27th by a part of General Porter's corps. A portion of my command also consisted of the troops under General Sturgis, which had begun to come up to Warrenton Junction. I was myself, on the morning of the 27th, at Warrenton Junction. The field of operations of the Army at that time covered the region of country between the Warrenton turnpike and the Orange and Alexandria Railroad.

Q. At what time on the 27th did you leave Warrenton Junction, and in what direction did you march?—A. I left Warrenton Junction before midday, I think, though the precise hour I do not remember, and moved east along the railroad, following the movements of Hooker's division, toward Manassas Junction.

Q. At what time did General Porter arrive with his command, or the portion of his command of which you speak, at Warrenton Junction?—A. I think between the hours of seven and ten o'clock in the morning of the 27th of August.

Q. How many troops had he then with him?—A. He reported to me that he had brought up Sykes's division of regulars, numbering forty-five hundred men.

Q. Did you see his troops, and, if so, what was their condition?—A. I only saw them at a distance as they passed along; not sufficiently near to ascertain anything about that.

Q. Did you, or not, after you left Warrenton Junction and proceeded along the road east, issue to Major-General Porter an order in reference to the movements of his troops; and, if so, what was the character of that order?—A. I issued an order to

General Porter late in the afternoon of the 27th, directing him to move with his command at one o'clock that night to the position I then occupied at Kettle Run; that if General Morell with his other division was not up to Warrenton Junction when he received that order, to send back and hurry him up, and to come forward himself with the troops which he had. That is my remembrance of the order. I gave him some further directions concerning General Banks's movement, the substance of which I remember very well, but not the precise words.

Q. Will you look at this order, which is dated "Headquarters Army of Virginia, August 27, 1862, 6.30 p. m., Bristoe Station. To Major-General F. J. Porter, Warrenton Junction," and state whether or not that is the order to which you refer in your answer?—A. That is the order I issued.

(The accused admitted that the order shown to witness is the order a copy of which is set forth in the first specification of first charge.)

Q. Will you explain to the court the reasons for the urgency of the order, as indicated by the following words of the order: "It is necessary on all accounts that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place?"—A. General Hooker's division had had a severe fight along the railroad, commencing some four miles west of Bristoe Station, and had succeeded in driving the division of General Ewell back along the road, but without putting it to rout; so that at dark Ewell's forces still confronted Hooker's division along the banks of a small stream at Bristoe Station. Just at dark Hooker sent me word, and General Heintzelman also reported to me, that he, Hooker, was almost entirely out of ammunition, having but five rounds to a man left, and that if any action took place in the morning, he would, in consequence, be without the means of making any considerable defense. As it was known that Jackson, with his own and the division of A. P. Hill, was at or in the vicinity of Manassas Junction, and near enough to advance to the support of Ewell, it was altogether probable that if he should learn the weakness of our forces there, he would unite and make an attack in the morning. It was for that purpose that I was so anxious that General Porter's corps should be present by daylight, the earliest moment at which it was likely the attack would be made.

Q. What distance would General Porter have had to march to have obeyed your order?—A. About nine miles.

Q. And within what time; from one o'clock until when?—A. He would have had until daylight. I do not remember exactly what time daylight was; perhaps four o'clock, perhaps a little earlier. I directed him to move at one o'clock, in order to give his command as much time to remain in their beds at night as possible; supposing that it would occupy him perhaps three hours to get up on the ground. I had expected him there certainly by four o'clock.

Q. You had just passed over the road along which he was required by this order to march: will you state its condition?—A. The road was in good condition everywhere. At most places along the road it was a double road on each side of the railroad track. I am not sure it was a double road all the way; a part of the way I know it was.

Q. Did General Porter obey that order?—A. He did not.

Q. At what time on the 28th did he arrive at Bristoe Station, the point indicated in your order?—A. As the head of his column came to Bristoe Station I took out my watch; it was twenty minutes past ten o'clock in the morning.

Q. Did he at that time, or at any time before his arrival, explain to you the reason why he did not obey the order?—A. He wrote me a note, which I received, I think, in the morning of the 28th; very early in the morning, perhaps a little before daylight. I am not quite sure about the time. The note I have mislaid. I can give the substance of it. I remember the reasons given by General Porter. If it is necessary to state them I can do so.

The accused asked if the witness had looked for the note.

The WITNESS. I looked for it, but have not been able to find it.

The JUDGE-ADVOCATE. I will not press the question.

The ACCUSED. I do not object to it. The witness says he has looked for the note and cannot find it. I only want to know when and where he has searched for it.

By the JUDGE-ADVOCATE:

Q. What was the character of the night; was it starlight.—A. Yes, sir; as I remember, it was a clear night; that is my recollection.

Q. If there were any obstacles in the way of such a march as your order contemplated, either growing out of the night or the character of the road, will you please state them?—A. There was no difficulty in marching, so far as the night was concerned. I have several times made marches, with a larger force than General Porter had, during the night. There was some obstruction on the road in a wagon train that was stretched along the road, marching towards the Manassas Junction, in rear of Hooker's division; *not sufficient, in my judgment, to have delayed for a considerable length of time the passage of artillery. But even had the roads been entirely blocked up, the railroad track was clear, and*

*along that track had passed the larger portion of General Hooker's infantry. There was no obstruction to the advance of infantry.*

Q. *Whatever obstacle, in point of fact, may have existed to the execution of this order, I ask you, as a military man, was it, or not, the duty of General Porter, receiving this command from you as his superior officer, to have made efforts, and earnest efforts, to obey?*—A. Undoubtedly it was his duty.

This is the particular excuse (darkness of the night), because unless there be a justification for the disobedience of this order the finding of the court-martial in this respect was certainly proper and certainly lawful.

We call attention to the first act performed by Fitz-John Porter at the time he arrived at Bristoe Station. It was not putting any batteries in position, nor drawing up the troops in line for battle, but he was wielding that which is mightier than the sword, that is, the pen. He arrived at Bristoe Station before his command. He wrote this letter, and sent it at once to General Burnside.

BRISTOE, 9.30 A. M.,
*August* 28, 1862.

My command will soon be up, and will at once go into position. Hooker drove Ewell some three miles, and Pope says McDowell intercepted Longstreet, so that without a long detour he cannot join Ewell, Jackson, and A. P. Hill, who are, or supposed to be, at Manassas. Ewell's train, he says, took the road to Gainesville, where McDowell is coming from. We shall be to-day as follows: I on the right of railroad, Heintzelman on left, then Reno, then McDowell. He hopes to get Ewell and push to Manassas to-day.

I hope all goes well near Washington—
I think there need be no cause of fear for us. I feel as if on my own way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare, and we must make connection soon. I hope for the best, and my lucky star is always up about my birthday, the 31st, and hope Mc's is up also. You will hear of us soon by way of Alexandria.

Ever yours,

F. J. P.

General BURNSIDE, Falmouth.

What did he mean by hoping that Mc's star is up, and "you will hear of us soon by way of Alexandria"? His whole mind was on retreat all the time, and that Alexandria was his objective point.

At 9.30 he writes one letter to General Burnside; then he had an itching very soon for writing another, and at two p. m. he writes again. But this is what General Burnside says to General Halleck when he sends the letter forward (general court-martial, p. 232):

FALMOUTH, *August* 29, 1862—1 p. m.

To Major-General H. W. HALLECK, *General-in-Chief*, and
Major-General G. B. MCCLELLAN, *Alexandria:*

The following just received from Porter, four miles from Manassas, the 28th, two p. m.:

"All that talk *about bagging Jackson, &c., was bosh.* That *enormous* gap—*Manassas*—was left open, and the enemy jumped through; and the story of McDowell having cut off Longstreet *had no good foundation.* The enemy have destroyed all our bridges, burnt trains, &c., and made this army rush back to look at its line of communication, and find us bare of subsistence. We are far from Alexandria——

"Considering the importance of transportation——

"your supply-train of forty wagons is here, but I can't find them.

"There is a report that *Jackson is at* Centreville, which you can believe or not. The enemy destroyed an immense amount of property at Manassas—cars and supplies. I expect the next thing will be a raid on our rear by way of Warrenton by Longstreet, who was cut off.

"F. J. PORTER,
"*Major-General.*"

This is the latest news.

A. E. BURNSIDE,
*Major-General.*

The fact remains, therefore, even on Porter's own showing in evidence, that the first order he received on the 29th of August, 1862, was not promptly obeyed. At the hour of its receipt, as the troops were merely in bivouac, it seems quite plain that they were prepared for immediate movement and already had their breakfast.

This order, the first, was issued at three a. m. by General Pope, and is as follows:

[No. 24.]

HEADQUARTERS ARMY OF VIRGINIA,
*Near Bull Run, August* 29, 1862—3 a. m.

GENERAL: McDowell has intercepted the retreat of Jackson. Sigel is immediately on the right of McDowell. Kearney and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville at the first dawn of day with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

I am, general, very respectfully, your obedient servant,

GEORGE D. RUGGLES,
*Colonel and Chief of Staff.*

Major-General PORTER.

Immediately on the receipt of this order, Porter, instead of starting at once, as he was required to do in obedience to the order to move at the dawn of day, at six o'clock takes time to write and send a letter to General Burnside. In that order he is required to start at the dawn of day. The sun rose then about five o'clock. Instead of moving at the dawn of day, or instead of moving at sunrise, at six o'clock a. m. that day, August 29, he wrote to General Burnside as follows:

BRISTOE, 6 *a. m. 29th.*

GENERAL BURNSIDE: Shall be off in half an hour. The messenger who brought this says the enemy had been at Centreville, and pickets were found there last night.

Sigel had severe fight last night; took many prisoners. Banks is at Warrenton Junction; McDowell near Gainesville. Heintzelman and Reno at Centreville, where they marched yesterday.

Pope went to Centreville with the last two as a body-guard, at the time not knowing where was the enemy and where Sigel was fighting—within eight miles of him and in sight.

The enormous trains are still rolling on. Many arrivals not having been watched for fifty hours, I shall be out of provision to-morrow night. Your train of forty wagons cannot be found——

but I expect they know what they are doing, which is more than any one here or anywhere knows.

F. J. P.

General Porter did not seem to obey the order sent by General Pope because it was verbal.

Then General Pope sends the order to him in writing. What is it?

HEADQUARTERS ARMY OF VIRGINIA,
*Centreville, August* 29, 1862.

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious, or we will lose much.

JOHN POPE,
*Major-General Commanding.*

Major-General FITZ-JOHN PORTER.

The order was directed to Major-General Fitz-John Porter; was given to him in lieu of the verbal order. General Pope swears, in his evidence in reference to this order, that the order was given to General Porter between eight and nine o'clock. He issued the first order early in the morning for him to move at the dawn of day. Let me ask what was the duty of Fitz-John Porter under that order? It was an imperative

order, "Push forward at once." Where? On Gainesville—Gainesville, the objective point, the place where Pope supposed he had troops before, but the troops having failed him, he wanted to get possession at once before support could come to Jackson through Thoroughfare Gap and Gainesville. What does Porter do? Porter takes it leisurely. How far had he to go? From Manassas to Gainesville is eight miles and a half. He was not as far back, but we will take it that he was at Manassas, that he had not moved in the direction of Centreville, because, in fact, he had only started. He had eight and a half miles to go to Gainesville.

Now, let us follow that up and see what was done. The movements were so strange to Pope, such an enigma to him, no order being obeyed, no order being taken as though he were in earnest, but Porter taking his own time to do everything, that General Pope sent a joint order to him and McDowell for them both to move on Gainesville, which order is as follows:

General Or ler No. 5.]

HEADQUARTERS ARMY OF VIRGINIA,
*Centreville, August 29, 1862.*

GENERALS MCDOWELL AND PORTER: You will please move forward with your joint commands toward Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that, as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall upon the enemy's flank and rear. I do not even know Ricketts's position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be had in view, that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or next day. My own headquarters will be, for the present, with Heintzelman's corps or at this place.

JOHN POPE,
*Major-General Commanding.*

Let us see the excuse that is made for not carrying out this order. It is that when General Porter got to Dawkins Branch, that is, when the head of his column got there—his forces in a body never did get there—he and General McDowell looking over the ground, General McDowell said, "Put your forces in here." Why not? Porter says the enemy was in front there. If they were in his front there, that was the place to put them in. It is not necessary to put your troops in where there is no enemy, but it is necessary to put them in where there is an enemy. He says that inasmuch as General McDowell told him to stop here and put his forces in here, therefore General McDowell ordered him not to go any farther. Now, that is not so. General McDowell undertook to carry out the order. How? By an examination of this map it will be easy for any one to understand how General McDowell was acting. When they came up to Dawkins Branch there was a little two-gun section, throwing shells over occasionally, and that seemed to stop this whole corps. General McDowell could not pass by Porter's corps on the road, and Porter's corps was stopped. The order contemplated General McDowell and General Porter moving on to Gainesville, the other forces being over toward Groveton. When General McDowell struck the head of

Porter's column and Porter stopped there at Dawkins Branch, McDowell naturally undertook to find a road on which he could travel and get to a position where he was required—a battle then going on.

General Porter himself gave testimony before the court of inquiry on General McDowell in Washington City. General Porter appeared before that board and gave testimony as follows (page 1010, board record:)

Question. (By General McDowell.) Under what relations as to command did you and General McDowell move from Manassas and continue prior to the receipt of General Pope's joint order?—Answer. I did not know that General McDowell was going from Manassas, and I have no recollection of any relations whatever, nor of any understanding.

Q. (By General McDowell.) Was there nothing said about General McDowell being the senior, and of his commanding the whole by virtue of his rank?—A. Nothing that I know of.

Q. (By General McDowell.) What time did you take up your line of march from Manassas Junction for Gainesville?—A. The hour the head of the column left, I presume, was about ten o'clock; it may have been earlier. Ammunition had been distributed to the men, or was directed to be distributed, and the command to be put in motion immediately.

Q. (By General McDowell.) When you received the joint order, where were you personally and where was your command?—A. I was at the head of my column, and a portion of the command or the head of the column was then forming line in front. One regiment as skirmishers was in advance and also a small party of cavalry which I had as escort. The remainder of the corps was on the road. The head of my column was on the Manassas road to Gainesville at the first stream, as previously described by me.

Q. (By General McDowell.) Please state the order of your divisions, &c., in the column at that time.—A. First, Morell's; next Sykes's; the other brigade, Sturgis's or Piatt's, I know nothing of, having left it, in compliance with orders from General Pope, at Warrenton Junction, with orders to rejoin as soon as possible.

Q. (By General McDowell.) Where was King's division?—A. I left King's division getting provisions and ammunition near Manassas Junction. I gave, personally, direction to General Hatch, in command, to move up as quickly as possible. I did not see General King at all.

Q. (By General McDowell.) The witness says he received an order from General McDowell, or what he considered an order, when General McDowell first joined him, which order he did not obey—

**Mark the language. He says he received the order, but he did not obey it. If he had that would have been the first order he had obeyed during the whole time—**

Will witness state why he disobeyed what he considered an order?—A. *The order I have said I considered an order in connection with his conversation, and his taking King's division from me. I therefore did obey it.*

**He did not obey it at first, but he did obey it, because he did not move in contravention of it. That is all he means by that, that he acted the same as if he had obeyed it, and yet he did not do that because he received the order. That is his meaning. What else did he state?**

Q. (By General McDowell.) What did you understand to be the effect of General McDowell's conversation? Was it that you were to go no further in the direction of Gainesville than you then were?—A. The conversation was in connection with moving over to the right, which necessarily would prevent an advance.

**He does not say that McDowell gave him an order to stop there, but he says they had a conversation, and that conversation was in reference to moving over to the right; that if he moved over to the right in pursuance of that conversation then he would not have moved forward.**

Q. (By General McDowell.) You state you did not think General McDowell's order (if it was one) a proper one, and that for that reason you continued your movement, as if you had not seen the joint order. Is the witness to be understood that this was in obedience of what he has stated to be General McDowell's order?—A. *I did not consider that an order at that time, and have tried to convey that impression*, but it was an

expression of opinion which I might have construed as an order; but when General McDowell left me he gave no reply to my question, and seeing the enemy in my front, I considered myself free to act *according to my own judgment, until I received notice of the withdrawal of King.*

There is General Porter's own evidence. He swears first that he did not obey it. Then he says it was a conversation that he might have construed into an order, but he did not consider it an order. He proves by his own (Porter's) testimony that he did not move from Manassas until ten o'clock, and by twelve he was at Dawkins Branch, which is shown to be five miles; from there to Gainesville was but three miles. Now, if Porter had moved by seven in the morning even, he would have struck Gainesville by ten, and then, with McDowell's corps following, Longstreet could not have joined Jackson.

General Pope testifies in reference to this order on page 14:

Question. Will you state what orders, if any, you gave to General Porter, on the 29th of August, in reference to the movements of himself and his men, and the grounds upon which those orders were based?

Answer. In answer to that question, it will perhaps be necessary for me to state, at least partially, the condition of things on the afternoon of the 28th, and during the night of the 28th and 29th of August, for the reason that the information from the front, upon which the dispositions of the army were made, varied at different periods of the day and night. And it was not until toward daylight in the morning of the 29th that I became thoroughly satisfied of the position of the enemy, and of the necessary movements of the troops to be made in consequence. The orders that I gave to General Porter on the 29th of August, as I remember them, were four. One of them was dated in the night, I think; I do not remember the time. That order I think required him, in consequence of information we had received of the enemy's forces beyond Centreville, to move upon Centreville. But about daylight in the morning I sent General Porter an order to take his own army corps, which was then at Manassas Junction, and which by my order had been re-enforced by the brigade of General Piatt, which had come up there in the command of General Sturgis, and King's division of McDowell's corps, which had withdrawn to Manassas Junction, or to that vicinity, during the night of the 28th, and move forward in the direction of Gainesville.

An hour and a half later I received a note from General McDowell, whom I had not been able to find until that hour in the morning, requesting that King's division of his corps be not turned over to General Porter, but that he be allowed to conduct it himself. I then sent a joint order to Generals Porter and McDowell, directed to them at Manassas Junction, specifying in detail the movement that I wished to be made by the troops under their command—the withdrawal of King's division, of McDowell's corps, which during the greater part of the night I had understood to be *on the Warrenton turnpike, and west of the troops* under Jackson. *Their withdrawal to Manassas Junction, I feared,* had left open Jackson's retreat in the direction of Thoroughfare Gap, to which point the main portion of the army of Lee was then tending to reenforce him. I did not desire to pursue Jackson beyond the town of Gainesville, as we could not have done so on account of the want of supplies—rations for the men and forage for the horses.

This explains exactly the meaning of that order. That order was that they should not go beyond a certain point that day because they might have to fall back behind Bull Run for the purpose of getting supplies. What is the explanation? That he did not desire to pursue Jackson further than Gainesville. His object was to drive him out in that direction before his supports could come up. Hence he sent McDowell and Porter in that direction for that purpose under this joint order that it is claimed here was an order putting McDowell in command. He says:

My order to Generals Porter and McDowell is, therefore, worded that they shall pursue the route to Gainesville until they effect a junction with the forces that are marching upon Gainesville from Centreville—the forces under Heintzelman, Sigel, and Reno; and that when that junction was formed (as I expected it would have been very near to Gainesville), the whole command should halt, it being, as I stated before, not feasible with my command in the condition it was in, on account of supplies, to pursue Jackson's forces further. During the whole morning the forces under

Sigel and Heintzelman had kept up a skirmishing with the rear of Jackson's forces, they retiring in the direction of Gainesville. They were brought to a stand at the little town of Groveton, about eight miles, I think, from Centreville, and perhaps five or six miles from Gainesville. When I rode on to the field of battle, which was about noon (having been delayed at Centreville), I found that the troops had been sharply engaged, and were still confronting each other. General Sigel reported to me that he needed re-enforcements in the front; that his line was weak, and that his troops required to be withdrawn from the action. I told him (as I did General Heintzelman, who was present on the ground) that I only wished them to maintain their positions, *as the corps of McDowell and Porter were then on the march from Manassas Junction toward the enemy's right flank and ought in a very short time to be in such position as to fall upon that portion of his line. I desired them, therefore, only to maintain the positions they occupied. We waited for the arrival of Generals McDowell and Porter.* At four o'clock, or some little after that time (perhaps at half past four in the afternoon), finding that neither McDowell nor Porter had made their appearance on the field, *I sent an order to General Porter informing him generally of the condition of things on the field*, and stating to him that I desired him to push forward and attack the enemy in flank, and, if possible, in rear, *without any delay.* This order was sent to General Porter *about half past four in the afternoon.* Finding that General Porter did not comply with this order, and receiving a dispatch which he sent to Generals McDowell and King, *stating to them that he was about to fall back, or was falling back to Manassas Junction*, and that he did so *because he saw clouds of dust*, showing that, in his judgment, *the enemy was advancing on the road he was occupying*, and stating that it appeared to him from the fire of the battle that he had been listening to that *our forces were retreating and the enemy advancing, and he had determined to fall back to Manassas Junction, and recommend Generals McDowell and King to send back their trains also*—receiving this note, purporting to be from General Porter to Generals McDowell and King, I sent an order to General Porter directing him, immediately upon the receipt of the order, to march his whole command to the field of battle, and to report to me in person for orders, stating to him that I expected him to comply strictly with that order.

Why did Pope issue that order? Because he could not get Porter to obey any order, he had to direct him to report in person to him on the battle-field with his whole command, and so he did require him to do so that he might be under his immediate eye:

I put it in such form (perhaps not entirely courteous) because *I had understood General Porter, upon two several occasions, to have disobeyed the orders that I had sent him. These are all the orders that I issued on that day and night to General Porter.* I will state in addition to what I have already said, that the first of these orders to which I have referred, being subsequently superseded, is not perhaps *referred to here.* I will also state that the corps of Sigel, Heintzelman, and Reno were formed in line of battle across the Warrenton turnpike, *facing to the west, and near the little town of Groveton, or at it, almost at the point where the road from Manassas Junction to Sudley Spring—the Sudley Spring road I think it is called—crosses Warrenton turnpike a little in advance of that road.*

(The judge-advocate stated that the first order, referred to by the witness in his answer to the last interrogatory, is not referred to in the specifications, being superseded by a subsequent order.)

Q. Excluding from view the first order given on the morning of the 29th of August, and which directed General Porter to fall back upon Centreville, and which, you say, was superseded by a subsequent order, are or are not the other three orders which you have enumerated in your last answer, given to General Porter on that day, the same which are set forth in the second, third, and fourth specifications of the first charge preferred against him? (Handing witness the charges and specifications.)—A. (After examining them.) They are the same orders.

Q. Do you mean to say that the order set forth in the second specification, addressed to Generals McDowell and Porter, is the one that superseded that first order?—A. No, sir. There was one sent to General Porter previously to that time, giving nearly the same directions, and which is referred to in that joint order as having been given an hour and a half before. I repeated that order in detail, because I was not sure that General Porter had received the order referred to there as having been sent to him an hour and a half before.

Q. At what hour in the *morning was this order issued*, addressed to Generals McDowell and *Porter, and set forth* in the second specification of the first charge?—A. *I do not remember distinctly.* I think it was somewhere between *eight and nine o'clock in the morning.*

Q. Was there any *engagement then pending?*—A. Fighting was then going on along the turnpike that *led from Centreville* to Warrenton—fighting was going on *quite sharply.*

Q. Did the march of General Porter's command, as indicated in that order, lead him toward that battle?—A. Yes, sir; it led him toward the flank of the enemy.

Q. What forces had he under his command that morning when that order was issued?—A. He had, or should have had, at Manassas Junction the whole of his own corps, which, from his report to me at Warrenton Junction, I understood to be between 8,500 and 9,000 men. I had added to his command the troops forming the brigade commanded by General Piatt; they were to belong to the division of General Sturgis, and I think they numbered about 3,500 men. Their exact strength I do not know. That was the impression I got from General Sturgis.

Q. Was that his entire command?—A. That was his entire command. I understood him to have had from 12,000 to 12,500 men at Manassas Junction.

Q. What was the distance between Manassas Junction and the scene of this engagement of which you speak?—A. Between *five and six miles*, I think, though I had not been myself over the road.

Q. Do you know the character of the road? Had you passed over it?—A. I had not passed over it.

Q. Did General Porter obey the order addressed to him and General McDowell?—A. I do not know whether he obeyed it; he did not obey it fully; how far he obeyed it I am not able to say; he certainly did not obey *the order fully*.

Q. If he had obeyed it, would it not have brought him up with the enemy before *half past four in the evening?*—A. *Yes, sir.*

Q. On your arriving on the battle-field, where was he reported to you to be?—A. I arrived on the battle-field at twelve o'clock, about noon. At 4.30 *p. m. nobody on the field knew where General Porter was at all.*

Q. Did or did not General Porter obey the second order to which you refer, issued at four and a half o'clock on the 29th of August, directing him to engage the enemy in flank, and, if possible, in rear?—A. *He did not, so far as my knowledge of the fact goes.*

Q. You have no knowledge of his having made any attack then?—A. I should have known it if he had attacked.

Q. Will you state to the court and describe the condition of the battle-field at that hour, and the importance of his obedience of that order to the success of your troops?—A. Late in the afternoon of the 29th, perhaps towards half-past five or six o'clock—about the time that I hoped that General Porter would be in his position and be assaulting the enemy on the flank, and when General McDowell had himself arrived with his corps on the field of battle—I directed an attack to be made on the left of the enemy's line, which was handsomely done by Heintzelman's corps and Reno's corps. The enemy was driven back in all directions, and left a large part of the ground with his dead and wounded upon it in our possession. *Had General Porter fallen upon the flank of the enemy, as it was hoped, at any time up to eight o'clock that night, it is my firm conviction that we should have destroyed the army of Jackson.*

Q. You have stated that General McDowell obeyed that order so far as to appear upon the battle-field with his command?—A. Yes, sir. *He arrived on the battle-field, I think, about five o'clock, and immediately pushed forward his corps to the front; the division of General King having a very sharp engagement with the enemy along the Warrenton turnpike, in advance of the position that we had occupied during the day.*

Q. To reach the battle-field, had or had not General McDowell as great a distance to march *as General Porter?*—A. Yes, sir; I should think fully as great.

Q. I believe you have stated the distance from Manassas Junction to the battle-field as about four or five miles?—A. Five or six miles; I am not quite sure; that is my impression.

Q. Is or is not that about the distance which the command of General Porter would have had to have marched to have obeyed your order?—A. It would have had to march less than that. You refer, I suppose, to *the order I issued about half past four* in the afternoon.

Q. Yes, sir.—A. General Porter was reported to me by the aid-de-camp who delivered him that order to be two miles or more from Manassas Junction, in the direction of the field of battle.

Q. In point of fact, did or did not General McDowell, in obeying that order, pass General Porter and his command on the way?—A. I so understood. General McDowell can tell that better than I can myself.

Q. I will ask you now in regard to the last order, that which purports to be dated on the 29th of August, at 8.50 p. m., and is set forth in the fourth specification of the first charge. I will ask you if General Porter obeyed that order or not?—A. General Porter appeared himself on the field the next morning with a portion of his command. Two brigades, however, were not present with him, but were reported by aide-de-camp to me as being at Centreville.

Q. Do you or not know at what point those brigades were separated from his command?—A. I do not.

Q. What brigades were they?—A. One was General Griffin's brigade; the other was General Piatt's brigade. I would say, however, of the latter brigade that when they reached Centreville, and found that there was a battle going on in the advance, they marched forward to the field, and made their appearance on the ground, and took

part in the action late in the afternoon of the 30th of August. That is, the brigade of General Piatt. They did so without orders to that effect from anybody.

Q. Do you know what became of General Griffin's brigade, or where it was during the battle of the 30th of August?—A. Of my own knowledge I do not know, except what was reported to me by my aide-de-camp from Centreville, that the brigade was there.

Q. It took no part in the action?—A. No, sir.

Q. Will you state what effect, if any, was produced, or was liable to be produced, on the fortunes of that battle by the absence of that force?—A. A very great effect. I do not know the strength of General Griffin's brigade; but a brigade of four regiments, and a battery of artillery, as I understand it. That was utterly withdrawn from the field; took no part in the action. General Piatt's command got up very late; too late to do anything, except, indeed, to contribute to enable us to maintain our ground until the darkness closed the fight. The presence of the other brigade would undoubtedly have been of immense benefit.

Q. Did or did not you regard the withdrawal of these brigades from General Porter's command, under the circumstances, a clear violation of the order issued to him to report with his command on the battle-field?

(Question objected to by a member of the court.)

The room was cleared, and the court proceeded to deliberate with closed doors. After some time the doors were reopened. Whereupon—

The judge-advocate stated the decision of the court to be that the question should be propounded to the witness.

Q. (Repeated.) Did *or did not you regard* the withdrawal of those brigades from General *Porter's command*, under the circumstances, a clear violation of the order issued *to him to report with his command* on the battle-field?—A. *Undoubtedly.*

Q. Will you state to the court whether or not you had made known to General Porter the position of the enemy's forces, and your plans and intentions so far and so fully that he knew the critical condition of your army, and the importance of rapid movements, and prompt and energetic action to secure your supplies and to guarantee success?—A. It has been my habit to talk very freely with all officers having large commands in the army which I commanded. How far I informed General Porter I am not now able to say. But I should presume, from my habitual practice, and from conversations that I had with him, that he understood pretty fully the condition of the army and the position of the various corps of the army. What I regarded as a necessity it is altogether possible he might have had a different opinion about. Therefore I cannot say that he understood the necessity which I understood.

After Pope learned of Porter's conduct on the field, Pope determined to arrest Porter, but was persuaded not to do so, but issued the following order, which clearly shows that Pope knew Porter was not obeying his orders. This order was issued on the night of the 29th to appear next morning or within three hours from its reception:

Major-General PORTER:

GENERAL: Immediately upon receipt of this order, the precise hour of which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

Up to the time of this positive order, requiring him to report to Pope on the field with his command, he obeyed no order, and in obeying this order he left part of his command, and did not bring it on the field at all; so he did not even obey this one strictly.

Was such an order as that ever issued before to a general on a battle-field? Why then? Because it was necessary, absolutely necessary, to issue this order to him, to obey it strictly, to acknowledge its receipt, and to report in person with his command to Pope himself, so that Pope could see that the orders were executed; and this order, as I say, was issued by him after his staff officers and some of his generals had persuaded him not to arrest Porter that day on the battle-field for disobedience.

General McDowell, in speaking of the order, says (court-martial record, pages 82, 83, and 84):

That was the only order I received from General Pope that day.

Q. How did you regard that order; as placing General Porter in subordination *to*

*you, or as indicating that you were both* to act independently of *each other, and each of you in subordination* to General Pope?—A. I cannot say *that at that time the order* occupied my mind in connection with the *question of subordination or otherwise.* In starting out on this road, as I mentioned before, General Porter had started out ahead of me, *under the order he had himself received from* General Pope to move with *his corps and one of my divisions on* a certain road, and, I think, for a certain purpose, though I am not certain as to that. At that time I conceived General Porter to be under me. When the joint order reached us we were doing what that joint order directed us to do. That joint order found the troops in the position in which it *directed them to be.* That joint order *gave a discretion to the effect that if any considerable advantages were to be gained by* departing from that order it *was not to be strictly construed.* I decided that considerable advantages were to be gained by departing from that order, and I did not *construe it, or strictly carry it out.* That order contemplated a line *being formed which was to be joined on* to a line that was to come up from the east to the west, and have the troops on the Gainesville road to *attack the flank and rear of the enemy,* as I understood it, in moving *along on the Gainesville road.* This long *line of troops*—those who were ahead of me, General Porter's corps—coming to a halt, I moved along and *rode by his corps to the head of* the column. On the way up to the head *of the column I received a note from* General Buford, addressed to General Ricketts, and to be forwarded to me. This note was addressed primarily to General Ricketts, and then to myself, for I do not think General Buford knew of General Porter's being there at the time he wrote it. I will read the note:

"HEADQUARTERS CAVALRY BRIGADE—9.30 a. m.

"Seventeen regiments, one battery, five hundred cavalry passed through Gainesville three-quarters of an hour ago on the Centreville road. I think this division should join our forces now engaged at once.

"Please forward this.

"JOHN BUFORD,
"*Brigadier-General.*

"General RICKETTS."

This was addressed to General Ricketts, who commanded a division. I do not know whether it went to General Ricketts direct, or came to me direct, or came to me from General Ricketts I infer it had reference to that division. General Buford belonged to General Bank's corps, but had been temporarily under my orders the day before, and had gone up to Thoroughfare Gap with Ricketts' division at the time I expected a force of the enemy to come through that gap; and he had fallen back with Ricketts, and at that time, as I understood, occupied a position to our left and front.

Q. Did you or not communicate to General Porter the contents of the note from General Buford, which you have read?—A. Yes, sir; I did communicate it to him.

Q. Where was General Porter's command at that time?—A. On this road leading from Manassas Junction, by way of Bethlehem chapel or church, toward Gainesville. The rear of his column had passed by Bethlehem chapel, which is at the junction of the Sudley Spring road with the road from Manassas Junction to Gainesville.

Q. Bethlehem church enables you to identify that position?—A. Yes, sir. It is at the junction, or the crossing rather, a little beyond the crossing of the Sudley Spring, or Gum Spring, or old Carolina road, with the road from Manassas Junction to Gainesville. The rear of General Porter's command was beyond that road, the head of it stretching out here in this direction [indicating on the map].

Q. Can you speak with any confidence as to the hour of the day at which you communicated to General Porter the contents of this note from General Buford?—A. It was somewhere before noon, I think. It is impossible for me to keep the hours of the day in my mind on such occasions. I have tried it several times but have never succeeded except some important things, such as daylight and darkness. It was communicated a short time after it was received.

Q. Did you or not, upon communicating this note, confer with General Porter in reference to his movements and your own?—A. I did.

Q. Will you state fully what occurred in that conference?—A. On passing the head of General Porter's column, which was on the road I have before mentioned, General Porter was in advance of the head of his column, I think, on a slight eminence or knoll or rise of ground, with some of his staff near him.

I rode up to him [Porter]; I saw that he had the same order as myself in the joint order.

## What order? The order to push on to Gainesville, the joint order.

Soon after *my attention* was directed to some *skirmishing,* I think some dropping shots in *front* of us. The country, in front of the position where General Porter was when I joined him, was *open for several hundred yards,* and near, *as I supposed,* by seeing the

dust coming *up above the trees*, the Warrenton turnpike, which was covered from view by the woods. *How deep those woods were I do not know.* It did not seem at that time to be a great distance to that road—the Warrenton turnpike. I had an impression at the time that those skirmishers were engaged with some of the enemy near that road. I rode with General Porter from the position he occupied, eastward, to the right—that is, the column being somewhat west of north, and I going east, made an angle with the line of troops on the road. The joint order of General Pope was discussed between us—the point to be held in view, of not going so far that we should not be able to get beyond Bull Run that night; that was one point, the road being blocked with General Porter's troops, *from where the head of his column was back to Bethlehem church; the sound of battle, which seemed to be at its* height on our right *toward Groveton; the note of General Buford, indicating the force that had passed through Gainesville, and, as he said, was moving toward Groveton, where the battle was going on—*

Not toward where Porter was, but in the direction of "Groveton, where the battle was going on"—

*the dust ascending above the trees seeming to indicate that force to be not a great distance from the head of General Porter's column.* I am speaking now of that force of the enemy referred to by General Buford as passing down the Warrenton turnpike toward Groveton. I understand this note of General Buford to refer to a force of the enemy. The question with me was how, soonest, within the limit fixed by General Pope, this force of ours could be applied against the enemy. General Porter made a remark to me which showed me that he had no question but that the enemy was in his immediate front. *I said to him: "You put your force in here, and I will take mine up the Sudley Spring road*, on the left of the troops engaged at that point with the enemy," or words to that effect. I left General Porter with the belief and understanding that he would put his force in at that point.

I moved back by the shortest road I could find to the head of my own troops, who were near Bethlehem church, and immediately turned them up north on the Sudley Spring road, to join General Reynolds's division, which belonged to my command, and which I had directed to co-operate with General Sigel in the movements he (General Sigel) was making at the time I left him in the morning. After seeing the larger part of my troops on the Sudley Spring road, I rode forward to the head of the column. I met a messenger from General Pope. I stopped him and saw that he had an order addressed to General Porter alone. I do not recollect more than the general purport or tenor of that order. It was to the effect that he should throw his corps upon the right flank or rear of the enemy from the position he then occupied. When I say right flank, I do so merely because of my knowledge of the position of the forces, not from any recollection of what that order contained on that point.

Q. Was or was not the messenger to whom you refer who bore that order a staff officer—Captain Douglass Pope?—A. I do not recollect; I do not think it was.

Q. You did not meet on the way, or take from the hands of any other staff officer on that day, an order from General Pope to General Porter, except this one, did you?—A. No, sir; and I did not take this from his hands in one sense. I examined it, gave it back to him, and he went on his way.

Q. Is Captain Pope personally known to you?—A. Yes, sir; he is. My impression is that it was not Captain Pope, but I will not be confident. I do not remember who it was.

Q. I will read you an order which is set forth in specification 1 of charge 2. (The order was read accordingly.) Do you or not recognize that as the order which you saw and read?—A. I can only say that the order that I saw in passing was of that same import. Whether that was the order or not, I cannot say.

Q. You have said that the accused made an observation to you which showed that he was satisfied that the enemy was in his immediate front; will you state what that observation was?—A. I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply. The observation was to this effect—putting his hand in the direction of the dust rising above the tops of the trees—"We cannot go in there anywhere without getting into a fight."

Q. What reply did you make to that remark?—A. I think to this effect: "That is what we came here for."

Q. Were there any obstacles in the way of the advance on the part of General Porter's command upon the flank of the enemy?—A. That depends upon what you would call obstacles. A wood is an obstacle.

Q. I mean insuperable obstacles, in a military sense.—A. I do not think *we so regarded it at that time. I did not.*

Q. Was or not the battle raging at that time?—A. The battle was raging on our right; that is, if you regard the line of the road from Bethlehem church to Gainesville to be substantially northwest, the battle was raging to the right and east of that line at Groveton.

Q. At what hour did you arrive upon the battle-field with your command and take part in the engagement?—A. I cannot say as to hours.

Q. As nearly as you can?—A. It was in the afternoon. I do not know at what time the sun set. I should not be able to fix the hour. It may have been four o'clock or five o'clock. One of my divisions, which had been the day before up to Thoroughfare, and the day before that on a long march, extending to late in the night, and which had started that day, Friday, and had marched since one o'clock in the morning, had its rear guard some distance behind, and that rear guard did not get up to Manassas until the next morning, though it got within a couple of miles of that place. That was the rear guard of the corps, in that instance a brigade.

Q. Did you, or not, afterward see General Porter during that engagement of the 29th?—A. No, sir; I did not.

Q. Did he, or not, with his command, take any part in that battle?—A. I do not know, of my own knowledge.

Q. What would probably have been the effect upon the fortunes of that battle if, between five and six o'clock in the afternoon, General Porter, with his whole force, had thrown himself upon the right wing of the enemy, as directed in this order of 4.30 p. m. of the 29th of August, which has been read to you?—A. It is a mere opinion that you ask?

Q. Yes, sir.—A. I think it would have been decisive in our favor.

Q. Did any considerable portion of the Confederate forces attack General Pope's left on Saturday, passing over the ground that General Porter would have passed over had he attacked the enemy's right on Friday?—A. I cannot say. They may have done so. I do not know.

Q. All the localities of which you have spoken in your testimony are in the State of Virginia, are they not?—A. Yes, sir.

Examination by the judge-advocate here closed.

Examination by the ACCUSED:

Q. Will you say whether you found General Porter's corps in the position where you expected to find it when you joined him the first time you saw him on the 29th of August?—A. I did not think anything about it; it was not a question with me.

Q. State if, when you found him at the place where the joint order required him to be, you stated to him, or thought, that you found in his front a different state of affairs than you had expected to find.—A. I do not recollect of such a statement.

Q. Try to recollect if, upon that occasion, you did not say to him, in substance, that he was too far in the front, and that the position in which he was was not a position in which to fight a battle, or anything to that effect?—A. I do not recollect.

Q. Are you sure you did not?—A. I have no recollection of any question about that place not being the one to fight a battle. Something may have been said about not going further toward Gainesville, with reference to falling behind Bull Run that night.

Q. If anything was said in relation to the facility of getting back to Bull Run that night, do you remember whether it was that the accused was too far in the front, or would be too far in the front if he moved further on?—A. It was hardly a question of going further on. It was more a question of turning to the right and going against the enemy than passing down the Warrenton turnpike.

Q. You say that something might have been said by the accused about getting back to Bull Run; are you to be understood as saying from recollection that he was told to keep in view his ability to get back to Bull Run?—A. That was the expression in the joint order.

Q. Was it used by you?—A. We referred to that point.

Q. When did you first see the order of which you have spoken in your testimony in chief, that of 4.30 p. m. of the 29th of August, which directed the accused to turn the right flank and attack the enemy in the rear? You have been understood as saying that that was the effect of the joint order. That is not your meaning, is it?—A. It was the effect of the joint order as modified by me, when I left General Porter, so far as I had the power to modify that order, and so far as the understanding with which I left him at the time.

Q. Are you to be understood as saying that before you saw the order to General Porter of 4.30 p. m. of the 29th of August, you, under the discretion you supposed was reposed in you by the joint order to yourself and General Porter, had directed him to attack the enemy's right flank and rear?—A. To that effect, yes, sir; I *knew* I had that discretion: I did not *suppose* it. This is the clause under which I *supposed*, if you prefer that term, I had that discretion: "If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out." That joint order contemplated General Porter's corps and my own to be employed differently from the way I had arranged when I left General Porter, which arrangement was to separate them, leaving him alone on the Gainesville road, whilst I went up the Sudley Spring road.

Q. Did you under that joint order suppose that you were authorized to take any part of General Porter's command and place it in such a position that it would not have been in the power of his command to reach Bull Run that night or the following morning?—A. That question, if I understand it, did not come up in my mind. The order itself stated that one thing was to be held in view. I will read that part of the order. "One thing must be held in view, that the troops must occupy a position from which they can reach Bull Run to-night or by morning."

Q. Was it your understanding of that joint order of the 29th of August that you could, under that order, direct General Porter to take his command into a position from which that "one thing" could not be accomplished?—A. Certainly not. The order does not say that I should disobey the order, and that is what the question amounts to.

Q. Have you any recollection that after you left the accused on the 29th, and took with you King's division, the accused sent a message to you requesting that that division should be permitted to stay with his command?—A. I received no such message.

Q. Will you say whether, in consequence of a message or otherwise, you sent a message to the accused with your compliments, telling him that you were going to the right and should take King with you, and that he, the accused, should remain where he was for the present, and if he had to fall back to do so on your left?—A. I do not recollect.

Q. Are you able to say that you are certain that you did not send such a message?—A. That is my impression, that I did not.

Q. What distance did you march with that portion of your command which you took to the battle-field from the point where you left the accused to the point upon the battle-field that you reached with that portion of your command?—A. Somewhere about four miles.

Q. What road did you travel, or did you travel any route known as a road?—A. The troops went by the Sudley Springs road from Bethlehem church.

Q. When you left the accused where you found him on the 29th of August, were you at that time advised that Longstreet's corps or any other corps of the confederate army was marching on to unite with the right of Jackson?—A. I did not know anything about Longstreet's corps or Jackson's corps. I have mentioned before that I received a note from General Buford that seventeen regiments, a battery, and five hundred cavalry were marching from Gainesville upon Groveton. To whom they belonged or to whom they were going was not a matter of which I was informed.

Q. Do you know now whether the information given by General Buford in the note to which you have just referred was correct?—A. I know nothing more now than I knew then; I believed it then to be correct.

Q. Will you state, if the force to which General Buford referred in his note actually passed through Gainesville at thirty minutes past nine o'clock on the 29th of August, how long you suppose it would have taken it to have joined the force in front, which, as we have supposed, was commanded by Jackson?—A. It would depend upon how fast they marched.

Q. I know that.—A. I do not know how fast they marched, so I cannot tell.

Q. How long would it have taken them if they had marched as fast as you think they could have marched?—A. I have formed no estimate as to how fast those troops can march.

Q. If those troops, in fact, marched as fast as you have marched your own troops upon any occasion, how long would it have taken them?—A. To go from Gainesville?

Q. Yes, sir.—A. Without stops, without obstacles, formations, or checks of any kind, simply marching along the road?

Q. The question has reference to the country as it is, a distance of, as you say, about four miles?—A. It was somewhere between four and six miles. Troops march readily from two miles to two miles and a half an hour, if there is nothing to prevent them, if they are not disturbed by stopping up the roads with wagons, getting breakfast, or something of that kind.

Q. From your knowledge of the actual condition of the country over which that force was supposed to be passing, can you tell whether there were any obstacles to their march, and if there were any, what were they?—A. Not having gone over the road, I do not know anything about the obstacles, one way or the other.

Q. Do you know what was the average number of the regiments of the confederates, each regiment, I mean?—A. Do you mean the strength of each regiment?

Q. Yes, sir.—A. They consisted of all the way from two hundred, or even as low as one hundred and fifty, up to one thousand or even twelve hundred. I have taken a great deal of pains at different times in examining deserters, scouts, spies, negroes, and prisoners, to ascertain that matter, and I find that nothing varies so much as the strength of the regiments on the other side. I have the impression that they were not very strong; that their average was certainly not greater than our own, if it was as great; but that it varies at different times. Before they had their conscription it

was very low; after the conscription their regiments were quite full. I have no personal knowledge of the matter at all. I give the sources from which I obtained this estimate.

Q. Have you a knowledge now of what was the actual force of the enemy under the command of Jackson, or did you know that Jackson was in command of the enemy?—A. I did not know that Jackson was there; I have been told that he was here. I do not know what his force was.

Q. And do you know or not what was the amount of the confederate force that was coming up?—A. Coming up when and where?

Q. As stated in the note from General Buford?—A. Nothing more than he told me in that note.

Q. How long had you left the accused on the 29th of August when you saw the order dated at 4.30 p. m. of that day, which was handed you by some officer?—A. I cannot tell; I do not recollect. I rode from the head of his column back to the head of my own column, and as rapidly as I could get my troops into position on the other road, and waited until the larger part of them had entered upon that road. Then, on riding by them to go to the head of my column on the Sudley Springs road, I met this messenger. I cannot tell how long all this took. I cannot fix the time when I left General Porter, and, of course, cannot fix the time when I saw this messenger.

Q. How often during this campaign of General Pope in Virginia, of which you have spoken, had you seen the accused before you saw him on the 29th of August?—A. I had not seen him during that campaign before I saw him on the 29th of August.

Q. How long were you together during that interview of the 29th of August?—A. I cannot fix the exact time. We rode together some distance; perhaps a mile; perhaps it may have been more; I do not recollect now.

Q. Was it five, ten, fifteen, or twenty minutes?—A. Yes, sir.

Q. Which?—A. You may put it at fifteen minutes, or at twenty minutes.

Q. During that conversation, that interview, did the accused say anything, or do anything, from which you inferred disloyalty upon his part, or unwillingness to perform his duty under the command of General Pope?—A. No, sir; what he said was the reverse. He professed to have but one feeling, which was that for the success of his country. This was said, I think, in reference to the embarrassment which I have before alluded to, about General King's division going under him, General Porter. It was not a question with me about loyalty or disloyalty; I never think of such things; what I mean is this: I assume everybody to be loyal; my suspicions do not run that way. The suspicion that persons who hold commissions as general officers in the Army are disloyal does not occur to me.

Q. It is not recollected what you said in relation to the embarrassment you speak of growing out of King's division being under General Porter's command. Will you state what it was that you understood him to refer to?—A. The embarrassment was rather on my side than on his; the embarrassment I refer to was this: I came down to take King's division and bring it up along with my other division, that is, with Reynolds's division, then engaged at Groveton. I found it with an order to go, under General Porter, in another direction; that was what produced the embarrassment. General Portor had nothing to do with that embarrassment; I may say that we were both embarrassed; I at finding one of my divisions under his command, and he at finding himself under my command. I do not know that "embarrassment" is the proper word to use; what I meant was that I found things different from what I expected to find. When I spoke of one of my divisions going under him, he suggested that I was the senior officer, as between himself and myself, and that I could take the command of the whole force—his corps and my own force—and we went forward at first in that way before the joint order reached us. I did not go to that place expecting to find General Porter; I went there to find my own division and I found General Porter there with an order to take one of my divisions under his command. That was not foreseen by the general-in-chief of that army, who was absent, and the matter was solved in the way I have stated, I commanding General Porter's corps and my own division. We then received the joint order, which directed the very things which we had ourselves done. The order was sent by General Pope upon the receipt of a note from me, in reference to this matter of my division.

Q. Do you know from what point King's division had marched on that day, or the day before, in order to get to the point where you found it on the 29th of August?—A. It had marched from some point or some place on the Warrenton turnpike, between Gainesville and Groveton, where it had an engagement with the enemy, back to Manassas Junction, having left, as I was informed by General Reynolds, about one o'clock on the morning of Friday, the 29th of August. It had been ordered the day before to march from Buckland Mills, which is beyond Gainesville, to Manassas Junction. Before it had reached Bethlehem Church it was ordered to move on to Centreville, in compliance with orders from General Pope, and had been sent from the road—or I do not know that it was on any road, but from the position where the order reached it—north to the Warrenton turnpike, and thence to move along that pike to

Centreville. It had become engaged with the enemy in the evening, and then, as I have before stated, fell back the next morning, starting at one o'clock, as I understood from General Reynolds. These facts I learned on the morning of Friday, the 29th, from General Reynolds, who had been personally with King's division; had ridden over to it the night before.

Q. Do you recollect whether you informed the accused at that interview that General Ricketts had been driven from Thoroughfare Gap, and that General King had been driven from Gainesville by the enemy?—A. I do not recollect having used such expressions. I recollect having informed him of the fact that General King's division, as I had learned from General Reynolds, had fallen back that morning, and also that General Ricketts's division had fallen back from Thoroughfare Gap. At the time I saw General Porter I had not got up with either of these divisions. I found them after my interview with him.

Q. Did you then know that Generals Ricketts and King had met with the enemy, the one at Thoroughfare Gap and the other at or near Gainesville, and that they were then falling back in consequence of the enemy?—A. I knew they had met the enemy the night before, but at the time I met General Porter I knew nothing of the details of the engagements which they had had with the enemy, nor do I recollect having said to General Porter, or having known, anything about the motives for General King's falling back to Manassas from this position on the road between Gainesville and Groveton. I have an idea that there was a question of supplies connected with the falling back from that point. General Reynolds had told me that he had told General King that he would be alongside of him in the morning. At the time I saw General Porter the whole subject of the engagements of the evening before, except the mere fact that there had been engagements, was unknown to me; I mean the details in regard to those engagements.

Q. You have stated, or have been understood to have stated, that when you were with the accused, on the 29th of August, the battle was going on, and you could hear it. Will you state if you heard any other firing than that of artillery?—A. I do not recollect about that now. The noise was very decided, and distant from where we were, I should suppose, about four miles.

Q. Do you know when the infantry firing on that day commenced; was it, or not, about four o'clock?—A. I think it was much earlier than that; I have only one thing to guide me, and that is General Reynolds's report; I can refer to that and find out more particularly if it is desired.

The examination by the accused was here closed.

Thereupon the court adjourned to eleven a. m. to-morrow.

The examination of Major-General Irvin McDowell was then resumed, as follows:

Examination by the COURT:

Question. Did or did not General Porter put his troops in action at the point indicated by you, at the time he said he could not go in anywhere there without getting into a fight?—Answer. Of my own knowledge I know nothing of what General Porter did after I left him.

Q. In departing from a strict obedience to the joint order of the 29th of August, did you or not extend that departure beyond your own immediate command? That is, did you change the order with respect to General Porter's corps?—A. General Porter and I started out from Manassas with the understanding that under the articles of war applicable to such cases, I had the command of the whole force—his own and my own. We each of us received a joint order from General Pope, our then commander-in-chief, which order, whilst it did not at the time change the relations between General Porter and myself, seemed to imply that those relations were not to be constant, were not to continue. I decided under the latitude allowed in that order, that General Porter should post his troops in to the right of where the head of his column then lay, and that I would take mine away from the road on which our two commands then lay, up the Sudley Springs road into the battle, in this way dissolving the joint operations of our two corps, and from the moment I left General Porter I considered he was no longer under my immediate control, or under my immediate command, or my direct orders, but that he came under those of our common commander-in-chief, we not then being on the same immediate ground. The article to which I refer is the sixty-second article of war, which directs that when troops happen to meet, the senior officer commands the whole. I considered that article of war to apply up to the time that I left General Porter and broke my command away from his, after which I conceived that his relations were direct to the commander-in-chief; therefore, in answer to the question, to that extent I did interfere with his corps, by separating mine from it, and also by indicating where I thought his corps ought to be applied against the enemy.

Q. Did you report to General Pope any change you had made in the operations of that joint order?—A. No further than by bringing my troops up, reporting to him that they were there, and receiving his orders. His order to General Porter direct met me on my way to join the main army. I did not know at that time that General Pope was at that particular place.

Q. When you saw the order from General Pope to General Porter, the one subsequent to the joint order, did you give or had you given any order to General Porter which would interfere with his obedience to it?—A. None.

Q. The orders you had given to General Porter were not in opposition, or, at least, not of a different character from the one that came to him from General Pope?—A. They concurred. The arrangements that I supposed to exist when I left General Porter concurred with the order which I afterward saw from General Pope to General Porter. They were to the same effect, except as to details, which General Pope may have given. I gave no details.

Q. Would or would not the presence of General Pope, an officer superior in command to both yourself and General Porter, render inoperative or inapplicable the article of war to which you have referred?—A. It would depend upon his presence, whether it was immediate or no'.

Q. We speak of such presence as existed then.—A. We did not so consider it. General Pope, according to the note we received, was at Centreville, which I suppose was some six miles off, and we were going away from him. I will mention further that the day before nearly a similar case happened, when General Sigel and myself were together at Buckland Mills, and I commanded General Sigel. That was done by a direct order from General Pope, before given. Still, it would have been the same if he had not given that order.

Q. Could the accused have engaged in the battle according to your order and according to the subsequent order of General Pope and still have fallen back to Bull Run within the time named in the joint order to yourself and the accused?—A. Yes, sir.

Q. From your knowledge of the nature of the country between General Porter's column and the forces engaged on the 29th of August, was there anything to have prevented the accused from making an attack upon the enemy's right or rear, as directed by General Pope? If so, state what it was.—A. My knowledge of the country is derived principally, first, from having gone over the railroad from Manassas to Gainesville in a car, or in a locomotive, which gave me but little idea of it, as I was engaged whilst going over with matters which prevented my paying attention to the country; next, in marching from Buckland Mills to Gainesville, and from Gainesville east along the Warrenton turnpike for a mile or two—I do not remember the exact distance—then turning off to the right and south, and going across the country to Bethlehem Church, and thence to Manassas; then from the fact that General Reynolds's division, which had the lead on the occasion that I refer to, going from Gainesville toward Groveton, had gone further on that road than I went myself, had turned to the right and gone toward Bethlehem Church; and from the fact that General King's division, which had gone on that same road toward Groveton from Gainesville, and had turned down south of that road, had again gone north on to that road, had engaged the enemy at a certain place, had fallen back to Manassas from that place, *which place I learned was nearly reached, if not quite, on Friday, the day of the battle, by the troops moving from Groveton west; and from the fact that the enemy's force had moved to the south on Saturday, and turned our left on that day. These movements by two divisions of my corps, my own movements, and the movements of the enemy, gave me the belief that troops could move through the country comprised between the Warrenton turnpike and the Sudley Springs road and the road from Bethlehem Church to Gainesville.* I will mention, further, that that country is a mixture of woods, cleared ground, and hills, and that it is easy for troops to march without being seen or seeing the enemy.

Q. Does the country which you have just described include that over which General Porter was required to march in obeying the order of 4.30 p. m. from General Pope to attack the enemy?—A. Yes, sir. I would say that I do not know that order by that hour.

Q. Please state the ground on which you formed the opinion that if the accused had attacked the right wing of the rebels, as he was ordered, the battle would have been decisive in our favor.—A. *Because on the evening of that day I thought the result was decidedly in our favor, as it was. But, admitting that it was merely equally balanced, I think, and thought, that if the corps of General Porter, reputed one of the best, if not the best, in the service, consisting of between twenty and thirty regiments and some eight batteries, had been added to the efforts made by the others, the result would have been in our favor very decidedly.*

Q. Was there anything besides mere advantage in numbers from which that result would have followed?—A. And position.

Q. What particular advantage in position was there?—A. The position in which that force would have been applied, while the main body was so hotly engaged in front, would have been an additional powerful reason for so supposing.

Q. When the accused said to you that he could not go anywhere there without getting into a fight, did he or not appear to be averse to engaging the enemy?—A. I cannot say that it made that impression on me, though in giving my answer I took the view that he did so imply, and made the remark; but I did not think he was

averse to engaging the enemy. I mean by that that that was not seriously a question with me, for when I left him I thought he was going to engage and would engage the enemy.

Q. Had General Porter taken part in the action of August 29 would you not have been likely to have known it?—A. *I heard that he did fire some artillery, and I did not hear his fire;* so that he might have gone into *action without my knowing it* at that time, because where I was there was *a great deal of noise;* and the noise that his engagement *might have made might have been* in a direction which would have confounded *it with other noise.*

Q. Up to what hour did the battle continue on that day, and how long was your command engaged in it?—A. It continued till after dark, or continued to such an hour in the evening when you could see the flash rather than the smoke. Of my command part of King's division was actively engaged to the front for, I should think, something like an hour, it may have been more, before the battle terminated. I speak of the active collision.

In the same connection, here spoken of, General McDowell swears that General Porter said, when he told him to put his force in here, "If I put them in there I will get into a fight." McDowell said, "Was not that what you came here for?" "If I put them in here I will get into a fight." Well, if an army is not put in for the purpose of fighting, what is it put in for? I suppose that the army of General Porter was not taken up there to hold a dress parade that day for the benefit of the boys who were in battle and getting shot. It could not have been for that purpose. If it could not have been for that purpose, I do not see what other purpose there could have been, except to fight; and yet he said, "If I go in here I will get into a fight." He did not get into a fight because he did not go in, and that is the only reason, perhaps.

General Roberts, who has testified in this case, swears that he had reason from his observations—he was in a place, too, that day where he could see the different parts of the field; he was in a direction where he could see where Porter was, where he could see the battle, where he could see the movements of the troops—he swears that he had reason to believe that Longstreet's corps did not go down in front of Porter, as has been represented or stated, but that the majority of it when it came, joined on with Jackson in the battle near Groveton, and so quite a number of officers swear. The Confederate reports sustain this statement. This is the testimony of General B. S. Roberts (court-martial record, p. 50):

Question. What do you know, if anything, in regard to the order issued by General Pope to General Porter, set forth in the third specification of the first charge, bearing date 4.30 p. m. of the 29th August?—Answer. About 4.30 p. m. of the 29th of August it was supposed by General Pope that General Porter was near the field of battle. The direction in which the first order required him to move would have brought him, as was supposed, near the field of battle before that hour; and I had noticed, in the direction where I knew General Porter was expected, the flash and the smoke from some pieces of artillery, and I inferred it to be artillery from General Porter, who was expected to attack there about that time. But it very soon ceased, and General Pope then wrote another order to General Porter, which, according to my recollection, stated that the direction of his movements would bring him on the enemy's right flank or rear, and that he wished him to press forward and attack immediately.

Q. Is or is not the order to which you now refer the one set forth in the third specification of the first charge?—A. That is the order to which I refer.

Q. Will you state what you know, if anything, in regard to General Porter's having either obeyed or disobeyed those orders?—A. I know that General Porter did not attack as he was directed to attack in that order. I was on that part of the field several times, and was expecting every moment that the attack would be made, and was watching for it with a great deal of anxiety, but it was not made.

Q. Did you continue upon the field until the engagement closed?—A. I was on the field all day, and remained on the field all that night.

Q. What were the results of the battle when the night closed in?—A. General Pope's troops, when night closed in, occupied quite a portion of the field from which the enemy had been driven, and, in my opinion, although the battle was not a decisive one, the advantages of the day were in favor of General Pope's army.

Q. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the result upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?

(The accused objected to the question.

The court was thereupon cleared.

Some time after the court was reopened, the judge-advocate announced that the court determined that the question shall be answered.

The question was again propounded to the witness, as follows:)

Q. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the results upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?—A. I do not doubt at all that it would have resulted in the defeat, if not in the capture, of the main army of the Confederates that were on the field at that time.

Q. Between four and five o'clock p. m., of the 29th of August, did the witness know whether or not Longstreet's forces, in whole or in part, had made junction with Jackson on Jackson's right?—A. I did not know; but I *had reason to believe that they had not made junction*, as I had been requested *by General Pope before going on to* the field, while at Centreville in the *morning, to take position and* with a glass to observe whether troops *were moving from the direction* of Thoroughfare Gap to Gainesville; *and having closely observed* that country for a long time, I became convinced *from the clouds of dust* that arose above the Bull Run range beyond Thoroughfare Gap, toward a gap north of Thoroughfare Gap, the name of which I now forget, that Longstreet was moving very rapidly to get through that northern gap and to re-enforce Jackson. But, from the distance from the head of the column of dust to Gainesville, I did not believe that he would be able to effect a junction before late in the evening, and so reported to General Pope.

Q. From what you know of the position of General Porter's command and of Jackson's right, would that junction of Longstreet's troops bring the enemy in front of General Porter's force?—A. If General Porter's force was on the road leading from Manassas Junction to Gainesville, where I suppose it was, and they had moved toward the right of Jackson's forces, it would have brought him upon the leading columns of Longstreet's forces that came in.

## GENERAL POPE'S ORDER TO PORTER TO ATTACK AT ONCE CONVEYED BY DOUGLAS POPE.

On the way to General Porter General McDowell stopped Douglas Pope and looked at the order. The order was for Porter to attack. The order was taken to Porter. Porter was not found at Dawkins Branch, where it was stated he was. He was not at the head of his column. He was down back nearly to Bethlehem church. The order was given to him, and one of his own officers swears that he took the order, read it, got off his horse, sat down with his back to a tree, and put the order in his pocket. Douglas Pope left him. After he started back General Porter sent an officer after him and brought him back again; what for, I do not know. He did not see Porter after he was brought back. He then afterward went back to Pope again.

The following is Captain Pope's testimony:

Captain DOUGLAS POPE was then called by the government and sworn and examined, as follows:

By the JUDGE-ADVOCATE:

Question. Will you state what is your rank in the military service?—A. I am captain and additional aid-de-camp.

Q. Were you with the Army of Virginia in its late campaign under Major-General Pope?—A. I was.

Q. In what capacity?—A. As additional aid-de-camp to General Pope.

Q. Were you or not on the field of the battle of Manassas on Friday, the 29th of August?—A. *I was.*

Q. Did you or not on that day bear any order from General Pope to General Porter; and if so, what was its character, and at what hour did you bear and deliver it?—A. I received an order from General Pope, to be delivered to General Porter, at half past four o'clock. The purport of the order I did not know at the time. I went directly to General Porter with that order, and it reached *him by five o'clock.*

Q. Was or was not that the only order which on that day you had to General Porter from General Pope?—A. *It was.*

Q. Where did you find General Porter with his command?—A. I found him at the *forks of the road leading from Manassas to Gainesville* and Groveton, on the railroad.

Q. What distance was that from Manassas Junction?—A. I do not know, of my own *knowledge; but I have heard that it was* between two and *three miles.*

Q. What distance from the battle-field where the engagement was then pending?—A. *When I received the order I was to the right of the* battle-field, and I suppose it was a distance of about three miles to General Porter.

## Porter was not with the head of his column, but back within two miles of Manassas Junction.

Q. Did you or not, on delivering the order, learn its character?—A. I did not.

Q. What statements, if any, did General Porter make to you in regard to the movements which the order contemplated he should make?—A. In a conversation which I had with General Porter, after his reading the order, he explained to me on the map where the enemy had come down in force to attack him, and had established a battery. I understood him to say that the enemy had opened upon him; but what he had done I do not now remember.

Q. How long did you remain with General Porter?—A. About fifteen minutes, I suppose.

Q. While you were there, or at any time before you left, did you observe any orders given, or any indication of preparation for a movement in the direction of the battle-field?—A. I did not.

Q. In what condition were the troops there at that time?—A. I saw only a portion of them; the portion that I saw I believed belonged to General Sykes's division. They were on the road between the forks of the road and Manassas—what small portion of the troops I saw that belonged to General Porter's corps. It was my impression they were halted there; I saw the arms of some of them stacked.

Q. They had their arms stacked?—A. Yes, sir.

Q. Was not the sound of the artillery of the battle then pending distinctly audible at that point?—A. It was.

Q. And was the sound of the small-arms distinctly audible at that point?—A. In regard to the small-arms I do not remember; but I could hear the artillery very plainly, very distinctly.

Q. Was it continuous, indicating a continued action?—A. It was.

Q. Did or did not General Porter make any inquiry of you at all as to the condition of the forces engaged in battle?—A. There were inquiries made of me by an officer—one of General Porter's aids-de-camp, I think. I do not think that General Porter said anything to me about it.

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## Page 58, G. C. M.:

Q. As you have passed over the road and know the distance, will you state within what time General Porter and his command could have reached the battle-field after the delivery of that order?—A. To have reached where I had received the order would have taken him two or three hours, I suppose—that is, to the extreme right of our army.

A. Within what time would it have required him to reach the right flank of the enemy?—A. I could not state, because I do not know where the right flank of the enemy then was. My impression, though, from what General Porter said, was that the enemy were nearly in his front. I supposed them about a mile from him. That was merely my impression from the conversation I had with General Porter.

Q. Did you or not have another interview with General Porter after that time?—A. I did not. After receiving a written reply to the order I had delivered to General Porter, I started on my way back, and I suppose I had got a mile or a mile and a half from where General Porter was, when I was overtaken by an orderly, who said General Porter wished to see me. I got part way back when I met an officer, I supposed an aid-de-camp of General Porter, who said that General Porter wished to see me. I went back, and this aid-de-camp told me I better wait a few minutes. I did not see General Porter then.

## This evidence shows conclusively that Porter did not intend to fight, and is supported by that of Charles Duffie, orderly, who was with Captain Pope, on page 609 of board record, who fully sustains Captain Pope in every particular in reference to the delivery of this order.

## Also, Archolas Dyer, page 1178 board record, sustains Captain Douglas Pope fully in reference to this order and its time of delivery.

Attention is also called to evidence of Lieut. Col. T. C. H. Smith, afterwards brigadier-general:

Lieutenant-Colonel THOMAS C. H. SMITH was then called by the government and sworn and examined, as follows:

By the JUDGE-ADVOCATE:

Question. Will you state in what capacity you were serving in the Army of Virginia in its late campaign under General Pope in August last?—Answer. I was aid-de-camp on the staff of General Pope.

Q. Did you or not, on the 28th or 29th of August, carry any orders from Major-General Pope to Major-General Porter which concerned his movements on those days?—A. I did not.

Q. Did you or not see General Porter during either of the days of the 27th, 28th, and 29th of August?—A. I saw General Porter on the afternoon of the 27th.

Q. At what place and under what circumstances did you see him?—A. I had been sent back to the ammunition on the train at Bristoe, and charged with its distribution. General Porter wished over four hundred thousand rounds; General Hooker something over ninety thousand rounds. About two or three o'clock I had sent forward to General Porter some three hundred and twenty thousand rounds, and had seized wagons to forward the balance, and left Captain Piatt in charge. The business being then sufficiently forward, I went on to find General Pope. On getting to the point where I had left General Pope in the morning, I found he had moved on, and, to inquire the road he had taken, I went to General Porter's headquarters, near the Manassas water-station. I found General Porter in his tent, and asked him which road General Pope had taken, and he informed me. I had some ten minutes conversation with him. One of his staff was present; I forget his name.

Q. Will you state that conversation?—A. After asking him about the road, I told *General Porter the amount of ammunition that I had sent forward to him, and also that the balance would come immediately forward. I asked him if he had received it, or made some remark; I cannot remember the exact expression.* General Porter said that he had not; that was the substance of his reply—either that he had received hardly any of it, or none of it, if I remember aright. I expressed some surprise, and *said that it had been sent forward to the front as ordered; and, either in reply to some question of mine or to some remark, or of himself, he said that he had no officers to take charge of it and distribute it, or to look it up, or something of that kind.* I remarked that he could *hardly expect us at headquarters to be able to send officers to distribute it in his corps; that it had been sent forward on the road in the direction where his corps was. He replied that it was going where it belonged; that it was on the road to Alexandria, where we were all going.* I do not know as it is evidence to give the spirit in which this was said—the way it impressed me. Those remarks were made in a *sneering manner, and appeared to me to express a great indifference.* There was then a pause for a moment. General Porter then spoke in regard to the removal of the sick and wounded from the field of Kettle Run. He said it would hurt Pope, leaving the wounded behind. I told him that they were not to be left behind; that I knew that a positive order—an imperative order—had been given to General Banks to bring all the wounded with him, and for that purpose to throw property out of the wagons if necessary. To this General Porter made no reply in words; but his manner to me expressed the same feeling that I had noticed before. This conversation, from General Porter's manner and look, made a strong impression on my mind. I left him, as I have said, after an interview of about ten minutes, and rode on, arriving at our headquarters on Bull Run just as we entered them and pitched our tents for the night. . After my tent was pitched, and I had had something to *eat, I went over to General Pope and reported to him briefly* what I had *done in regard to the ammunition. I then said to him, "General, I saw General Porter on my way here." Said he, "Well, sir." I said, "General, he will fail you." "Fail me," said he; "what do you mean? What did he say?" Said I, "It is not so much what he said, though he said enough; he is going to fail you." These expressions I repeat. I think I remember them with exactness,* for I was excited at the time from the impression that had been made upon me. Said General Pope, "How can he fail me? He will fight where I put him; he will fight where I put him;" or, "*He must fight where I put him; he must fight where I put him*"—*one of those expressions.* This General Pope said with a great deal of feeling, and impetuously, and perhaps overbearingly, and in an excited manner. I replied in the same way, saying that I was certain that Fitz-John Porter was a traitor; that I would shoot him that night, so far as any crime before God was concerned, if the law would allow me to do it. I speak of this to show the conviction that I received from General Porter's manner and expressions in that interview. I have only to add that my prepossessions of him were favorable, as it was at headquarters, up to that time. I never had entertained any impressions against him until that conversation. I knew nothing with regard to his orders to move up to Kettle Run. I knew nothing of any failure on his part to comply with any orders.

Q. State more distinctly the point where you saw General Porter on the 28th of August?—A. *He was encamped at the Manassas water-station, between Bristoe and the junction. The water-station was a short distance from his headquarters.* (The witness indicated upon the map before the court where he thought the place to be.) I do not think the water-station is more than *one-third the distance from Bristoe to Manassas Junction.* That is my impression; I cannot speak positively about it.

Q. In the conversation to which you refer, did or did not General Porter manifest any anxiety to get possession of, and have distributed in his corps, the ammunition of which you speak?—A. No, sir; I thought he showed an utter indifference upon the subject; showed it very plainly.

Q. At what hour of the day did this conversation between you and General Porter take place?—A. *I think it must have been about four o'clock in the afternoon; half past three or four o'clock.*

Q. In anything that was said in that conversation, or in the manner of General Porter, was there evidenced any desire or any willingness on his part to support General Pope in the military operations in which he was then engaged?—A. *Quite the contrary to that.*

Q. Can you state whether the disinclination to support General Pope, which you thought he manifested, was the result of disgust with the immediate service in which he was then engaged, or of hostility to the commanding-general, or upon what did it seem to rest?—A. It seemed to me *to rest on hostility. But I do not know that I could analyze the impression that was made upon me. I conveyed it to General Pope in the words that I have stated.* I had one of those clear convictions that a man has a few times perhaps in his life as to the character and purposes of a person whom he sees for the first time. No man can express altogether how such an impression is gained from looks and manner, but it is clear.

Q. Had you passed over the road between Bristoe Station and Warrenton Junction on that day or on the previous day?—A. *On the previous day, the 27th, I came over it after General Pope.*

Q. At what hour of the day did you pass over it?—A. I should say that I left our headquarters, about a mile from Warrenton Junction, *about half past four or five o'clock* in the afternoon. I should say it was *past the middle of the afternoon.*

Q. *What was the condition of the roads then?*—A. For the first mile and a half, until you got to Cedar Run, the road was bordered on either side by open fields or open woods, over which troops could march easily, in great part without going on the road. Indeed, I doubt whether there is any regular road a good part of the way up. The troops marched through the fields to Bristoe Station.

Q. Were you or not present at the battle of the 29th of August?—A. Yes, sir; I was present.

Q. Throughout the engagement?—A. I left with General Pope when he rode on to the field, but on the way out he sent me with an order off the road, so that I did not get on the field for two or three hours after that.

Q. At what time did you regard the battle as commencing?—A. The smoke was rising over a considerable portion of ground, I should say a mile, plainly in view, when we were at Centreville; and there was some heavy cannonading. I should say it was about ten or eleven o'clock when I first came to Centreville, and it was about eleven or twelve o'clock when I saw the appearance of which I speak—the sign of a heavy action, from the smoke rising. It was very plainly in view from Centreville; you looked right down upon it, and you could hear the sound of the guns. I did not ride up to the town at first, but finding that General Pope had not ridden on, as I had supposed, I rode back to Centreville, and then it was I saw the appearance I speak of, about eleven or twelve o'clock. I should mention, too, in order that it may be clearly understood in regard to the action, that at the time I was sent off from the road, while General Pope was riding on the field, there was a cessation of cannon-firing for a considerable time, I should say for certainly a half an hour.

Q. Was or was not the battle raging at five p. m. on that day?—A. Yes, sir; severely.

This other testimony shows the animus of General Porter from the beginning to the end of this whole case. Even when his ammunition was sent forward to him he would not order a man to distribute it, but asked that Pope should send an order to distribute it to his corps. Not only that, but he said in a sneering manner, "it has gone where it belongs, gone to Alexandria, where we shall all be soon." If any general officer will continue to make expressions "that we are going to be whipped, we are bound to retreat," and sneer at everything, it must prove injurious and result disastrously.

Following Porter up to Dawkins branch, where his head of column

was on the day of the 29th, General Daniel Butterfield, one of his own commanders, testifies as follows:

Question. State whether the point at which you were directed was on the same side of the Manassas Railroad or on the other side from the one upon which you were at the time.—Answer. The point at which I was directed was across the railroad.

Q. Which direction from the point from which you were moving?—A. To the right, between Groveton and Gainesville; I understood it to strike between Groveton and Gainesville, keeping the movement toward Gainesville, covering this road that led up to Gainesville, a dirt road; and the leaning, if anything, was to be to the right rather than to the left (road marked on the map). And in pursuance of *that order I put my brigade in motion, saw that it started out, and then proceeded in advance myself with my staff* to make a personal reconnaissance—

This was after they had arrived at Dawkins Branch—

*to look up a position and see whatever difficulties might be in the way. I understood myself not at liberty* to bring on this engagement *until the division could be deployed behind, unless I could gain a position, finding affairs that I could handle in front of me.* I went out personally with my staff after seeing the head of my column in motion, leaving it in charge of the senior colonel, Lansing, of the Seventeenth New York. *I proceeded until I came up in close proximity to the enemy's skirmishers, when one of my staff officers asked me if I proposed to tackle the enemy alone. I said no;* I had troops behind; I turned around, and, to my astonishment, saw that my brigade that I had put *in motion, and seen well out over toward this dry branch,* were not there—had returned and were out of sight. I returned with great *rapidity and considerable temper. I did not understand why my command had left me; I came back and found that my brigade had moved off to the right in these woods;* which were very thick. There was a little road running along here, and they were out in front of this and had come to a halt. *That is, they were back of Dawkins Branch, back on the high land, on this side of the railroad—south side of the railroad—in the woods.* I asked my senior officer what it meant—his returning without any orders from me; he said he had received orders directly to return, and not to make the advance. I was in no very pleasant humor about that method of proceeding. He offered as his excuse that the orders had come direct from a staff officer of General Porter, or from *General Porter himself.* I asked *where General Porter was.* He said he had gone in this direction, in the woods, with General McDowell. I met one of General Porter's staff officers, and entered a complaint against his order withdrawing my troops without the order coming from me when I was in front. *I received answer that it was a sudden movement in consequence of something that had occurred between General Porter and General McDowell.*

Q. You were informed by the staff officer that that was the reason it was given?—A. That that was the reason the order was given. We then were moved a little farther to the right, then returned to the left; then we went up and took position again under same order over on the same ground, *and were withdrawn again. These different movements occupied until dark. Then we went into camp rather with the expectation, as I judged from what came to me from General Morell, of an attack from the enemy upon us.*

Q. About what force had you under you in the battle of the 30th? What was your command in the battle of the 30th?—A. I commanded two brigades of the division. General Morell, with General Griffin's brigade, had gone to Centreville. I proceeded with my brigade to Sudley church and Groveton, in that vicinity.

General Butterfield was then and there attempting to move across Dawkins Branch and to find a position to bring on an engagement, but not until his brigade was all ready and he found himself and one of his staff officers out there alone, and when he looked back his brigade had been taken off without notifying him and put into the woods back to the rear. What else? Solomon Thomas testifies that he was with Fitz-John Porter's corps, in the Eighteenth Massachusetts, Martindale's brigade:

SOLOMON THOMAS, called by the recorder, being duly sworn, testified as follows:

Direct examination:

Question. Where were you on August 29, 1862?—Answer. With General Fitz-John Porter's corps, Eighteenth Massachusetts, Martindale's brigade, Morell's division.

Q. Do you recollect being at Manassas Junction on that day?—A. I do.

Q. Did you move off on the Gainesville road?—A. We moved up on the line of the railroad. We moved more in a direct line in front, though we were intending to move to the right.

Q. How far upon that road did your regiment go?—A. We went upon that road nearly to a small creek, or what had been originally a small creek; it was dry or nearly so at that time.

## Referring to Dawkins Branch.

*Q. What did you do there?—A. We then halted, and the Thirteenth New York, or a part of it which was thrown out as skirmishers—a battery was planted in our front a little to our right—*

## This testimony shows the intention of General Porter—

*in the fields, and as the skirmishers of the Thirteenth advanced we were deployed to the right, into the woods; our right rested in the woods. We halted and lay down.* This was probably *ten o'clock in the morning* I should say; might have been a little later.

Q. How long did you remain there?—A. We remained in that position—I should say it was half-past four when we were called to attention and right-about-face, and moved out from that position, left in front, upon the same road that we moved down on in the morning. *I don't know the distance, but we had been marching some time.*

Q. *Back toward Manassas Junction?*—A. Yes; toward Manassas Junction—*when an officer came riding from the Manassas Junction way, having a dispatch, and rode up to General Porter, and handed him the dispatch. Then we were commanded to halt; we did. General Porter dismounted, and sat down by the side of the road and leaned his back against a tree—quite a large tree—and read the dispatch, and went up and remounted and called us to attention and right-about-face. We marched back upon the same road we had come on, moving then right in front, until we came near the position of the road where we had moved into the woods on the right, in the morning. We then moved out to the left, into an open field. The artillery was brought into the field,* and parked in our front. We were formed in line, and were ordered to stack arms; we did so. Orders were received that there should be no fires made to make any coffee; that we were to remain perfectly quiet. The adjutant received orders that if there were any orders received during the night he should deliver those orders to the commander of each regiment in person, so there should be no loud words spoken; and we were to remain. Me and some of my comrades spread our blankets and were preparing to lie down for the night. *As we sat down, before we got ready to lie down, we heard upon our right a shout which we knew was a charge—from the shout; then we heard musketry discharges.*

Q. *What did you understand at that time?*—A. I felt at that time that we were *expected to charge on the rear and flank in conjunction with what was going on in front.*

Q. About what time of the day, in reference to sunset, was it that you were halted on your way back to Manassas Junction, and that an officer came up with a dispatch?—A. I should judge from the position of the sun it must have been somewhere from five to half-past five o'clock.

## That was the order that Douglas Pope brought to Mr. Porter, and this soldier was present and saw him receive the order, and he turned his command back, and moved them again on the road, putting them into the woods, and ordering them to lie down and make no fires. They did not attack, but were to lie down and kindle no fires to cook coffee or anything else.

Q. During *the day did you hear any indications of a battle* going on; if so, what were they, and where were they?—A. In our immediate front *we heard an occasional discharge of musketry*, and, in fact, there were pieces of railroad iron fired from a rebel battery right over our right, and two pieces lodged in the rear of where I lay, probably 40 feet in *our rear.* Some of *the boys went and dug them up*, and one of them was *eighteen inches in length, the other was about fifteen.* We thought of bringing *them home, but they were rather heavy*, so we left them on the field. Then, while we were lying there, beside that we heard, upon our right, distant firing all day, but not continuous; there were intervals that we could hear artillery distinctly.

Q. On the 27th of August where were you?—A. We were moving on the Warrenton road toward Bristoe Station. I should think that we were encamped on that night some six to eight miles from Bristoe Station. We went in before sundown; probably the sun was an hour or an hour and a half high when we halted there.

Q. When did you move from there?—A. I was corporal of the guard that night, and was ordered to wake the men at 1 o'clock, which I did, and we were formed and moved out from our camp immediately after 1 o'clock.

## The statement of this witness shows that he himself expected that they were to attack, and expected so all day. From 10 o'clock up to the time he was moved back on the road he was expecting they were to attack this little squad in their front.

Mark J. Bunnell, on page 678 of the board record, says:

I called to an orderly and stated to him what I wanted. He called Colonel Marshall, and they came down within a few paces of where I was, and Colonel Marshall then received his orders to deploy his regiment as skirmishers in front.

Q. Did you hear the order?—A. I stood right there so I could hear.

Q. What were the orders that General Porter gave Colonel Marshall?—A. I could not hear all the conversation, but to deploy his regiment as skirmishers, as we were about ready to move out; not to bring on a general engagement, but the idea was that we had to do duty only as skirmishers.

General Sturgis, one of Porter's officers, swears that on the 29th of August he moved on the Gainesville road (board record, page 711):

Question. You say you went a mile and a half beyond Bethlehem church toward Gainesville?—Answer. That is my recollection.

Q. What did you then do?—A. I reported to General Porter. I rode in advance of my brigade. I found troops occupying the road, and I got up as near as I could get and then halted my command, and then rode forward to tell General Porter that they were there. He said, "For the present let them lie there."

Q. What did you do then individually?—A. Well, I simply looked about to see what I could see. I was a stranger to the lay of the land, and the troops, and all that; so without getting off my horse I rode about from place to place watching the skirmishers, and among other things I took a glass and looked in the direction of the woods; about a mile beyond which seemed to be the object of attention—beyond the skirmishers; there I saw a glint of light on a gun; and I remarked to General Porter that I thought they were probably putting a battery in position at that place, for I thought I had seen a gun.

Q. State what the conversation was.—A. I reported this fact of what I had seen to the general; he thought I was mistaken about it, but I was not mistaken, because it opened in a moment—at least a few shots were fired from that place—four, as I recollect.

Q. What force of the enemy did you see in that direction at that time?

Page 712, board record:

A. I didn't see any of the enemy at all.

Q. Then what did you do?—A. Then when they had fired, as near as I can recollect, about four shots from this piece, General Porter beckoned to me; I rode up to him and he directed me to take my command to Manassas Junction, and take up a defensive position, inasmuch as the firing seemed to be receding on our right.

Q. What firing do you mean?—A. I mean the cannonading that had been going on for some time on our right, probably in the direction of Groveton.

Q. How long had you heard that cannonading?—A. I don't recollect exactly where I heard it first. My impression has been that I heard it all along the march from Manassas to General Porter's position. I do not recollect distinctly that I did hear it, but I know I heard it all the time after I arrived there until I left.

Q. What time of day was this that you received the order to move back with your command to Manassas Junction?—A. I have no way of fixing the time of day. I have carried in my mind the impression that it was more about the middle of the day—about one o'clock.

Q. What did you do when you received that order?—A. I sent word to General Piatt to move back to Manassas Junction, and that I would join him there.

Q. Do you know whether your order was obeyed?—A. Yes; it was obeyed.

And that is the fact, that on that day at the very time it was expected a fight would come on, General Porter ordered Piatt's command back to Manassas Junction to take up a defensive position:

Colonel Marshall reports that two batteries have come down in the woods on our right, toward the railroad, and two regiments of infantry on the road. If this be so, it will be *hot* here in the morning.

Q. Was that returned with this indorsement of General Porter? "Move the infantry and everything behind the crest, and conceal the guns. We must hold that place and make it too hot for them. Come the same game over them that they do over us, and get your men out of sight?"

This is General Porter's indorsement on that order.

A. Yes; that was the next one.

Instead of moving forward and attacking the enemy, he gives orders to his division commander to hide his men in the woods, and take his

batteries under cover—hide them away, keep them out of sight. Why? He says to come the same game over the enemy that they do over us.

Q. When that was received by you, directing you to move your infantry and everything behind the crest, and conceal the guns, where were your infantry and the other troops?—A. At that time they were deployed in line, mostly two brigades, along the crest that leads to the descent toward Dawkins Branch.

At the very time Porter ordered this officer to hide his men in the woods, put them under cover, and play hide-and-seek with the enemy, it appears he had a whole brigade deployed in line of battle for the purpose of moving upon the enemy.

Q. It was from there that you were directed to move?—A. From there I was directed to put the men under cover. On this left-hand side of the road, as we advanced, it was all open ground; on the right-hand side, bushes. One of my batteries, supported by a brigade, was on the right-hand side of the road, just on the crest of the ridge, the other battery on this side. When General Porter sent me that order I put them back into this fine bushes; and the other two batteries on this side of the road were on a slight depression; I supposed the ridge in front would conceal them from the enemy. I had three batteries, and one was in position all the time.

General Morell continues, on page 423, board record:

Question. Why is it that on No. 30, the communication from General Porter to yourself, and on those that follow, there is no memorandum of the hour and minute of the receipt?—Answer. It was always my practice to note the hour of the receipt. Two days previous to that, on the march from Kelly's Ford to the Junction, I injured my watch, and then I had to guess at the time.

Q. And you did not put on the guess?—A. I did not put on the guess.

Q. Will you state whether the indorsement of General Porter on No. 31 was received by you as appears upon it?—Yes, sir.

Q. Your communication to him is this:

"GENERAL PORTER: I can move everything out of sight except Hazlett's battery. Griffin is supporting it, and is on its right, principally in the pine bushes. The other batteries are retired out of sight. Is this what you mean by everything?

"GEO. W. MORELL,
"*Major-General.*"

A. Yes, sir.

The indorsement was read, as follows:

"I think you can move Hazlett's, or the most of it, and post him in the bushes with the others, so as to deceive. I would get everything, if possible, in ambuscade. All goes well with the other troops."

"The WITNESS. Yes, everything was out of sight except Hazlett's battery. That was exposed all day long."

Q. Then, on the receipt of No. 31 from General Porter, you did not succeed in getting Hazlett's battery under cover?—A. No, I didn't attempt to. I wanted to keep one battery in position. That was in front of the bushes, with a brigade immediately behind it. The other two brigades were massed in the rear of that.

Comment is unnecessary. When General Porter was ordered to move forward, when he was ordered to attack, when he was ordered in every order that was given him to press forward, to push forward, to attack, to assault, to go to Gainesville, he was trying to hide his men in the woods by the roadside, behind a branch.

GENERAL MORELL: Tell me what is passing, quickly. If the enemy is coming, hold to him, and I will come up. Post your men to repulse him.

F. J. PORTER,
*Major-General.*

After he had gotten them hid in the woods, then he sends a dispatch, "tell me what is passing, quickly. If the enemy is coming, hold him." Hold him! I will come as quickly as I can. What next? "Colonel Marshall reports a movement in front of his left." Porter could not tell him what he wanted to do, but Morell begins to take the hint by that

time that Porter did not intend to fight, and in order, I suppose, to test his commanding officer, sends him this dispatch:

Q. What next?—A. Then, I think, 35; which is a note from me to General Porter.
"GENERAL PORTER: Colonel Marshall reports a movement in front of his left. I think we had better retire. No infantry in sight and I am continuing the movement. Stay where you are, to aid me if necessary.

"MORELL."

Now, he says:

Colonel Marshall reports a movement in front of his left. I think we had better retire.

What does Porter say?

GENERAL MORELL: I have all within reach of you. I wish you to give the enemy a good shelling, without wasting ammunition—

Do not waste ammunition; shell them, but hold your ammunition—

and push at the same time a party over to see what is going on. We cannot retire while McDowell holds his own.

F. J. P.

"I want to retire," he says; "but hold on until McDowell is whipped; I cannot retire while he holds his own." Morell finding out that Porter wants to retire, he intimates to him: "Let us retire." He, Porter, says: "Yes, but we cannot do it just now, while McDowell holds his position!"

You may follow every order and every movement of this man, from the night of the 27th of August, 1862, up to this last order, and there is not one single line that he has written, not one single order he has given, not one word he has uttered, but what has been in the direction and presupposition of a defeat for our troops and a retreat of his own without a fight.

You will find in this evidence a communication from General Porter to Generals McDowell and King on that day, which is printed on page 243 of the record of the court-martial. That goes exactly in the same line with all the rest:

Generals MCDOWELL and KING: I found it impossible to communicate by crossing the fords to Groveton. The enemy are in great force on this road, and as they appear to have driven our forces back, the force of the enemy having advanced and ours retired, *I have determined to withdraw to Manassas.* I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going. Had you not better send your train back?

F. J. PORTER,
*Major-General.*

I will communicate with you.

He says this to McDowell and King, while McDowell and King were engaged in moving forward to attack the enemy. Why does he do that? If you are about to assault, and expect a division to support you on your left and be ready to come to you, if at that time you get word from that division that they are going to retreat, what effect must it have when you are thus notified at the very moment you are going into battle that the troops you expected to support your left have determined to retreat without firing a single gun?

General Morell, in his testimony, says:

Question. Did the putting of those that were foremost under cover cause any movement of those behind them?—Answer. I think not. I think those immediately behind Hazlett's battery remained where they were, and the others went to the rear.

* * * * * * *

Q. Will you look at the communication from General Porter to Generals McDowell and King, on that day, which is printed on page 243 of the original record?

This witness, General Morell, was asked if he had any knowledge of this communication. What does he say:

Question. What I want to ask is, whether you had any knowledge of that communication being made that day?—Answer. I don't remember it.

Q. Did you receive or know of any order indicating a withdrawal to Manassas?—A. No, sir; nothing of the kind.

Q. Or any movement in that direction?—A. Nothing of the kind.

Q. Will you look at a copy of a communication from General Warren to General Sykes, dated 5.45 p. m., August 29, 1862, which has been put in evidence? [Paper shown witness.] In this General Warren uses these words. I will read the whole of it:

"General SYKES: I received an order from Mr. Cutting to advance to the support of Morell. I faced about and did so. I soon met Griffin's brigade withdrawing, by order of General Morell, who was not pushed out, but retiring. I faced about and marched back two hundred yards or so; I met then an orderly from General Porter to General Morell saying he must push on and press the enemy; that all was going well for us and he was retiring. Griffin then faced about, and I am following him to support General Morell, as ordered. None of the batteries are closed up to me.

"Respectfully,

"G. K. WARREN."

At that point of time, after Griffin had been ordered to retire, Warren comes along for the purpose of supporting Morell, and Morell then had a communication showing that the battle was going *well* to his right at Groveton, and then he orders an assault to be made; but mark what follows. It was not intended that the assault should be made, and the evidence shows that clearly.

Q. Do you know anything of that allusion to yourself in it?

Morell is asked if he knew anything of the allusion to his retiring. He says he did not.

A. No, sir; I never gave General Griffin any order of that kind.

Q. What kind?—A. That he should retire or retreat. There was no order to leave the front, except to get under cover of those bushes.

Q. State whether, during the whole of the 29th, you had your whole division in command ready to meet any attack that might be made by the enemy.—A. Yes; I did.

Q. Although they were under cover, as you have described?—A. Within reach, at any rate, of the batteries, just at the other side of the road—within a few minutes' call.

Q. Were your advanced regiments and skirmishers in such position in the neighborhood of Dawkins Branch that if any movement toward attacking you had been made by the enemy you would have known it in time to receive it with the whole of your division?—A. I think so.

Q. Will you state what action you took in obedience to No. 37, which directed you to push up two regiments supported by two others preceded by skirmishers, the regiments at intervals of two hundred yards, and attack the section of artillery opposed to you—what you did with the four regiments indicated, and what you did with the rest of your division in connection with what you did or what you ordered?—A. When I received that order—the latter part says, "the battle works well on our right"—

Showing that it was the same communication—

"the battle works well on our right; the enemy said to be retiring up the pike"—I said immediately to the person who brought it that the order was given under a misapprehension. We knew the enemy were not retiring; and I believe I sent that message to General Porter. I immediately gave orders to move the whole of my division to the front to be in readiness to support the four regiments. While that was going on I received a verbal order from Colonel Locke to make an attack. When I received this order it was quite late in the afternoon, just before sunset; the sun was almost touching the tops of the trees.

The order was sent by Porter to Morell to attack. That proves conclusively that Porter had received the 4.30 order from Pope, and then in obedience to that he ordered Morell to attack. He sent the order to Morell to attack in order to comply with Pope's order; but how does he comply with it? Then there came a verbal order from Colonel Locke,

the same one who brought Morell the order from Porter to attack, and what is that?

And soon after that an order in writing, which is No. 38, "to put the men in position and remain during the night."

Here Porter first orders him to attack; then immediately afterward, before he could put his men into position, he gets an order in writing to remain in position there that night. That is the manner of obeying the order of Pope. That shows clearly that he had received the order, but was determined not to attack and determined not to obey.

He (that is the messenger from General Pope)—

Mark you how it comes in—

He handed the general a note, which I afterward ascertained was an order for him to attack the enemy at once.

This shows that the order given to Morell by Locke to attack was in obedience to the 4.30 order of Pope, because Locke himself says that:

"He (that is, the messenger from General Pope) handed the general a note, which I afterward ascertained was an order for him to attack the enemy at once. He very soon afterward ordered me to ride up to General Morell and direct him to move forward and attack the enemy immediately, and to say that he would be up himself right after me."

Then on page 223:

"Toward the close of the day, when I was sent by General Porter to General Morell with the order for him to move forward his division and attack the enemy, on my way up to General Morell I passed Colonel, now General, Warren."

Is that, as you now understand it, the verbal order which General Locke finally brought to you to attack after you had received and were proceeding to execute No. 37?—A. I think now that it is, from conversations that I had had with Major Earle. At the time I knew nothing about this 4.30 order.

Q. You merely received this written and verbal order directing an attack in succession?—A. Yes; and when Colonel Locke came to me with that order I was engaged in getting my men up to the front, and I supposed it was rather supplementary to the written order, and perhaps to expedite the movement. After this investigation was begun I tried very hard to recollect who brought me that written order to attack with four regiments, and until I conversed with Major Earle and saw the letter of his I could not fix it. But upon talking with him I am very well satisfied now that he did bring the order, and that Colonel Locke's order referred to the 4.30 p. m. order.

Q. Colonel Locke's order that he describes as being for you to attack with your division?—A. As Colonel Locke states in his testimony on page 223. I cannot speak positively, but from conversation with Major Earle and my recollection, I have no doubt that it is so.

There is the evidence of his own staff officer showing that he saw him receive the order, and that he immediately sent an order to Morell to attack, and so soon as he gave the order for Morell to attack, then he dispatched a written order to Morell directing him not to attack but to remain in *statu quo* all night.

Colonel Smith testifies:

By the JUDGE-ADVOCATE:

Question. Will you state your position in the military service of the United States?—Answer. I am a captain of the Sixth Regular Infantry and colonel of the One hundred and twenty-sixth Regiment of Ohio Volunteers.

Q. Will you state to the court whether you were serving with any part of the Army of Virginia, commanded by Major-General Pope, on the days of the 27th, 28th, 29th, and 30th of August last; and, if so, in what brigade and division?—A. I was serving in Colonel Chapman's brigade of General Sykes's division.

Q. In what direction did that brigade march on Friday, the 29th of August last?—A. We had marched from Fredericksburgh by way of Warrenton Junction, and arrived at Manassas Junction, I think, on the 29th of August, the day before the battle of Bull Run. We arrived exactly at the place where the railroad had been destroyed; the wreck of the train was there, and there we halted. Late in the day, in the morning, we retraced our steps to the branch railroad running, I think, towards Gainesville or Manassas Gap, and followed the direction of that road some few miles. We then

halted on some rising ground, where we could see the country beyond, over the woods, the tops of the trees. It was a wooded country. While we were halted there a battery of the rebels opened upon us, but fired some three or four shells only, I think; there may have been a half a dozen. Our brigade then marched into a field and the regiments were placed in order of battle. I recollect that General Morell's division was in our advance, on the lower ground.

## That is where Morell had testified about Dawkins Branch.

*Some of our pieces replied to* this rebel battery. I received permission *from the commanding officer* of my regiment to go to a more elevated piece of ground, a few rods distant, and while there I saw our batteries reply. *A short time afterward (probably a half an hour) we received orders to retrace our steps and march back in the direction we had come.*

## That was in the direction of Manassas Junction.

*We then marched back to near Manassas Junction, and camped in the woods alongside this branch railroad I have mentioned. That night I was placed on duty as the field officer of the pickets of Sykes's division.* About daybreak the pickets were called in, and we marched toward the battle-field of Bull Run, and were engaged in that battle.

Q. What was the effect of the reply of your guns to this attack of the rebel battery?—A. It seemed to silence that battery, and it withdrew. At least that was the impression I had at the time.

Q. What amount of infantry force, if any, did there seem to be supporting this rebel battery?—A. I did not see them.

Q. *Before you received orders to fall back and retrace your steps along this road, had or had not this rebel battery been completely silenced?*—A. I think it had been.

Q. Were there not at that time clouds of dust in view, showing an advance of the enemy?—A. Clouds of dust were distinctly visible further over beyond the trees. Whether there were troops advancing, or whether they were moving in another direction, I could not tell. I could see distinctly the clouds of dust, as if there was a large body of troops moving.

Q. Did you or not see the accused, General Porter, at the head of the column on that day?—A. No, sir; I do not recollect of seeing General Porter at all that day.

There is one of General Porter's own command, Colonel Smith, of Sykes's division, of Chapman's brigade, who testifies that he was up in supporting distance on rising ground just behind Morell's division with his command, and that he received orders to retire to Manassas Junction, and that he did retire to Manassas Junction and staid there until the next day, when he marched to the battle-field on the 30th. And yet it is insisted that there was no retirement of any of the troops of Fitz-John Porter on the 29th. I will show before I am through that he left nothing there; and nothing remained but a mere picket line, and that his troops did retire, some to Manassas Junction, some to Centreville, and some to Bethlehem church. If General Porter did not wish them to retire he ought to have ordered them to stay there, but they all say that they retired under orders. Retired from what? Not from the sound of battle in their front; not because of any enemy in their front. Why, then, did they retire, and why were they ordered to retire? No battle was going on in their front. Why was it? Why are troops sent back from where you expect an assault, if the assault is to be repelled?

Then, again, take the evidence of General Griffin. General Griffin commanded one of the brigades of Morell's division. Griffin retired with his brigade to Centreville. He says:

In the evening a little after dark there were some very heavy volleys of musketry, the enemy evidently driving our troops right before them. That musketry was to our right and front, I should say two miles, may be not so far; may be further. I should have stated, when I stated that I heard no other firing but artillery, that in marching we had some skirmish firing.

Q. You spoke of having returned from the movement you made to your right in consequence of obstacles that you encountered. What was the character of those obstacles, and what efforts did you make to overcome them?—A. I led off my column. We ran up into some little thick pine bushes. We halted there. The next order I got was to move back again. Some one reported that we could not get through. I made no reconnaissance whatever myself.

Here is one of General Morell's brigade commanders who started to move off to the right, and ran into some little pine bushes. He calls them "little thick pine bushes." He says he then received an order to go back, which he did. Now, mark what he says following that:

Q. You say that you had failed to get through to the right during the day of the 29th of August. Will you state what efforts were made by you, or by General Porter, to get through on the right during that day?—A. I merely obeyed orders.

He does not say that he made any effort, but "I merely obeyed orders." Orders from whom?

My position was at the head of my brigade. What efforts General Porter made I am not aware of.

Now, follow this witness: Captain J. J. Coppinger, of the Twenty-third United States Infantry, then a captain of the Fourteenth United States Infantry, testifies: "That at the firing of three shots his command was ordered to the rear, and retired from one to two miles, and lay there until next morning." Captain A. P. Martin, commanding the artillery of Morell's division on the 29th of August, swears as follows:

Examination by the COURT:

Q. Do you know of any order having been given by General Porter to make an attack upon the enemy during that day?—A. I did not. I received orders from him to put the batteries in position.

Q. How long did the artillery firing continue?—A. The firing of the first section of the enemy's battery that opened from the woods in front continued perhaps twenty minutes; they fired very slowly. An hour later, perhaps, there was a battery opened further to our right, and they were engaged by Hazlett's battery of Morell's division.

Q. At what distance from each other were these batteries that were engaged?—A. I should think not over a thousand yards; *it might have been a thousand* or one thousand two hundred yards.

Q. Do you know whether any effect was produced on either side by this artillery fire?—A. *They were in the woods and we could not see, except that the first battery that was opened was silenced, I should think, in about twenty minutes or half an hour.*

Q. Was there any loss on our side?—A. Yes, sir; *one man was killed—*

Heavy loss that day!—

A. Yes, sir; one man was killed by the first shot that the enemy fired. I saw him fall.

Q. On which side of the Manassas Gap Railroad, north or south, were the enemy's batteries, that you were then engaging?—A. They were on the side toward us—the south side, I suppose.

The examination of this witness was here closed.

The evidence of this officer, who was in command of the artillery that day, shows that the only firing done during the day was from two guns, that did not last over twenty minutes, and only one man was killed, and that by the first shot; that is all the battle that amounted to anything, so far as the artillery (Porter's) was concerned. Read, that there may be no mistake, some of the different orders and communications that were made that day by General Porter:

[No. 37.]

AUGUST 29.

GENERAL MORELL: I wish you to push up two regiments supported by two others, preceded by skirmishers, the regiments at intervals of two hundred yards, and attack the section of artillery opposed to you. The battle works well on our right, and the enemy are said to be retiring up the pike. Give the enemy a good shelling as our troops advance.

F. J. PORTER,
*Major-General Commanding.*

[No. 38.]

GENERAL MORELL: Put your men in position to remain during the night, and have out your pickets. Put them so that they will be in a position to resist anything. I

am about a mile from you. McDowell says all goes well, and we are getting the best of the fight. I wish you would send me a dozen men from the cavalry. Keep me informed. Troops are passing up to Gainesville, pushing the enemy. Ricketts has gone; also King.

F. J. PORTER,
*Major-General.*

Mark this: In the dispatch which he sends to McDowell preceding this, in which he tries to excuse himself, he says, "I have tried to get communication with you; I cannot get my couriers through; they have run into the enemy, and I have no information from you;" and then right here he sits down and writes an order that he *has* information from McDowell that all is going well on the right, showing that he states a falsehood in the report from beginning to end, that his statements will not hang together, and just as any man does who is guilty of an offense, he usually convicts himself by contradictory statements.

First he says he could get no communication with McDowell, and then sends an order to Morell in writing saying he has a communication from McDowell and that all is going well on the right, and that Ricketts's division and McDowell's are driving the enemy in their front. What follows? Then he sends a note to McDowell that he has failed to get Morell's division over to him. He says:

[No. 38 *a*.]

GENERAL MCDOWELL OR KING: I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me, I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

F. J. PORTER,
*Major-General Volunteers.*

[No. 38 *b*.]

GENERAL MCDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened upon us. The fire of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going, and I will communicate with you. Had you not better send your train back?

F. J. PORTER,
*Major-General.*

Here he tries to cover up the fact that he had received a communication from McDowell, when just preceding that he tells Morell that he has heard from McDowell. So he determined to retire to Manassas.

To show that he did communicate with McDowell, and that not only he communicated with McDowell but the depressing effect that it had on our troops in the front at Groveton, where the battle was going on—General Heintzleman's testimony shows they did receive a communication from General Porter. In the board record, on page 610, he says:

Question. Will you read to the board from the diary those events which you noted at the time, August 29, 1862?—Answer. "Centreville, Friday, August 29, 1862: Kearney did not get off until after daylight" that night. The night before the 29th General Kearney was advanced as far as Centreville. I think General Pope was quite near on the opposite side of the river from Centreville. In the night an order came for Kearney to advance at one a. m. and attack the enemy. Hooker at three a. m. was to support him. The report was General McDowell had intercepted the enemy, and the next morning I started at daylight, as I was directed. When I got to where Kearney was, his division had not started, and he was killed not long afterward, before I made my report.

Q. Now, will you be good enough to read what you made notes of on the 29th of August as to the events of that day?

Here are his notes about what went on during the battle:

Kearney did not get off till after daylight. We are all detained by him. There is a heavy cloud of dust on the road to Leesburg, upon which the rebels are retreating or rather advancing. It is now a quarter past seven a. m.; arrived at the bridge at nine a. m. Firing commenced some two hours ago, and has just ceased. Report that we are driving the enemy. At ten a. m. reached the field, a mile from the stone bridge. Firing going on, and I called upon General Sigel. General Kearney was at the right. Part of General Hooker's division I sent to support some of Sigel's troops. General Hooker got up about eleven a. m.; General Reno nearly an hour later. Soon after General Pope arrived—about quarter to two. I rode to the old Bull Run battle-field, where my troops were. The enemy we drove back in the direction of Sudley's Church, and they are now making another stand. We are hoping for McDowell and Porter. *I fear we will be out of ammunition.* We have sent for it. At 3.30 p. m. our troops driven back. At forty-five minutes past three McDowell's troops reported arrived. Firing closed at fifteen minutes past four. At half past four General Reynolds's troops arrived. Five p. m. our troops engaged on the enemy's right. Twenty minutes past five p. m. musketry firing commenced on our center. General Kearney has held his position. Forty-five minutes past five General McDowell on the field at headquarters. Heavy firing on our center. Kearney reports he is driving the enemy back.

Mark the time, five o'clock.

*General Porter reports the rebels driving him back, and he retiring on Manassas.*

At five o'clock he says he could not get any communication; but here General Heintzelman, at five o'clock, on the battle-field, while the battle was going on, notes the receipt of a report from General Porter intimating to Pope and all of them that he was attacked and retreating on Manassas. At five o'clock, the very time that our army had commenced its severest attack on the enemy, this report comes to headquarters: "Porter has been driven off the field, and is retiring to Manassas;" and this report comes over his own signature, all of which, all know from the evidence, was not true. Now mark as we go on:

Twenty minutes past six very heavy musketry and artillery. McDowell's troops just entering the battle-field. Kearney on the right with General Stephens's troops, and our artillery drove the enemy out of the woods they temporarily occupied. The firing continued until after night, but left us in possession of the battle-field.

This shows that after five o'clock General McDowell's troops made an attack upon the enemy; and until the battle closed General McDowell was engaged with two divisions, King's and Reynolds's, both of which lost heavily in that engagement; they did not enter the engagement until after five o'clock. So at the time that General Porter was trying to retire from the front of no enemy whatever, General McDowell was putting his command into action and fought a severe battle, continuing until eight or nine o'clock. General Longstreet's, General Lee's, and other reports on the Confederate side show that the battle did not cease until eight or nine o'clock at night, and one of them says not until ten; and yet Porter could neither move nor strike the enemy.

Lewis B. Carrico, who resides on the battle-ground, called by government, testified as follows (board's record, page 982):

Question. Where do you reside?—Answer. Prince William County, Virginia.

Q. Where did you reside on the 29th of August, 1862?—A. Where I now reside, very near the Manassas Gap Railroad.

Q. Were you there on that day?—A. I was.

Q. Up to what hour in the day did you remain there?—A. I was there until very late Friday evening.

Q. During that day did you see any Confederate forces? If so, where?—A. I saw some cavalry scouts during that day, and in the evening there was a battery firing some seventy-five or eighty yards back of my house, just west of my house, and an officer came there and told me I was in danger, and to take my family and go back of the line.

Q. Where did you go then?—A. I went up the road about a mile, to a farm owned now by Major Nutt.

Q. Towards Gainesville?—A. Between there and Gainesville.

Q. Did you meet any Confederate force on that trip? If so, about where?—A. I saw them a little beyond Hampton Cole's, a very small number. They were sitting down on the side of the railroad, and their battery, that was planted at the back of my house; that opened upon the Federal troops directly after I passed it; and when I got up there against them, they got up and took shelter on the embankment of the railroad.

Q. Did you at that time see any troops to the south of the railroad?—A. None at all, except a little picket force that was a little to the south of the railroad, just above there; a small picket force.

Mark the time of day. There were no troops whatever south of the railroad; that is, on the side on which General Porter was.

Q. Did any Confederate force pass to the east of your house during the day? If so, in what direction did they go?—A. I saw none pass to the eastward. I saw some shelling from the back of what is called the Britt farm, and a disabled Federal wagon at the mouth of a lane called Compton's lane.

Q. About what time in the day was that?—A. I could hardly say; twelve or one o'clock.

* * * * * * *

Q. What do you mean by the expression "evening"?—A. I mean something like three or four o'clock; somewhere thereabouts.

Q. How do you fix the time?—A. I fix the time by having to leave home, and having to go the small distance I did go.

* * * * * * *

Q. What room did you stay in?—A. I was all over the house; very often up stairs, looking out of the window.

That is, the window of Carrico's house.

Q. Which way?—A. Toward Dawkins Branch.

Exactly in the direction of Porter's command.

Q. What time was the cannon posted there?—A. Possibly four o'clock.

Q. You are positive about that?—A. I am not positive; but according to the best of my judgment it was probably as late as four.

Q. Was it earlier or later than four?—A. It was not earlier, I do not think; not earlier than three *I am very sure.*

* * * * * * *

Q. Were there any soldiers of any description about your house, except the battery?—A. On Friday there was a Federal force in Mr. Lewis's field, to the east of my house.

Q. Where was Lewis's field?—A. Within three hundred or four hundred yards to the east of my house.

Q. Were there any about your house?—A. Yes; there were some of the Federal forces; two men that I had had some acquaintance with, who were in my house when this wagon was disabled at the end of Compton's lane.

* * * * * * *

Q. About where is the place where you carried your family?—A. Immediately at the Manassas Railroad, one mile past Hampton Cole's.

Q. You say you did not meet any considerable body of the Confederate force on your way there?—A. Yes, I do say it; and I saw no considerable body there, as I stated to you and General Porter, if he was with you, until I got home next morning, about sun-up. They came there to my house and destroyed a great deal.

That is, the Confederates did.

There is a statement of a man who lived at the house where this battery which did such terrible execution was playing on the head of Porter's column. He stayed all day up in his house, looking out of the window, and the only troops there was a small force with that battery and the cavalry videttes that ran along over to the right. That was all the force there, as the evidence, Confederate and Union, shows, until very late in the afternoon.

Then follow that up with the evidence of B. S. White (board record, page 983). B. S. White, on August 27, 1862, held the position of major

in the assistant inspector-general's department of the Confederate Major-General J. E. B. Stuart's staff:

Question. That morning, after Major Patrick had those orders to charge, what did you do?—Answer. The enemy were driven away.

Q. Then what was the next event that transpired?—A. We moved off across the country to find out what had become of Longstreet's corps—

To see what had become of it; it had not arrived, Major White swears. They were going along to see if they could discover it—

We moved off in this way, toward Thoroughfare Gap.

Q. Did you find General Longstreet's column or corps advancing?—A. We did, between Hay Market and Gainesville.

Q. What did General Stuart then do?—A. General Stuart then threw his command on Longstreet's right and moved down with his right flank in the direction of Bristoe to Manassas Junction.

Q. What did you then observe?—A. We took the road leading directly down the Manassas Gap Railroad; there is a road running parallel with it.

Showing that they came down the Manassas Gap Railroad, and not down the road that Porter was on at that time, moving up to Gainesville on a road running parallel with the Manassas Gap Railroad.

Q. How far down did you go?—A. General Stuart threw his command on the right of Longstreet, and passed down the Manassas Gap Railroad to about that point [west of Hampton Cole's; point marked "W"].

Q. Then what did you do?—A. We discovered a column in our front—discovered a force in our front coming from the direction of Manassas Junction to Bristoe.

Q. What sort of a point was that where you discovered this column coming, so far as observation is concerned?—A. It was a good point for observation; a high position, elevated ground. We could see Thoroughfare Gap and Gainesville and all the surrounding country.

* * * * * * * *

Q. When you got back to General Stuart, where was he?—A. Where I left him, on that hill.

Q. At that time where was General Longstreet's command?—A. They had come down and were forming *here*. [Witness indicates a point back westerly of Pageland lane.]

If anybody will examine the map as to Pageland lane, they will find that Longstreet was forming away beyond the Manassas Railroad, and not at all upon this road that Porter was traveling, but Pageland lane, making Manassas Gap Railroad the right of Longstreet's line, and not running across upon this road upon which Porter was at all, and nowhere near it.

Q. About what time of day was it that this affair occurred at Sudley Springs; before you and General Stuart started to cross the country toward Thoroughfare Gap?—A. Early in the morning.

That is, before they started from Sudley Springs, away off to the left of Jackson's command.

Q. At what would you fix the time?—A. I suppose eight or nine o'clock in the morning.

Q. Did you remain at this point with General Stuart after you got back on this hill?—A. I did.

Q. What became of this column of troops that you saw advancing?—A. I don't know what became of them; they disappeared from our front.

Q. Do you know of any other position being taken up by General Longstreet's command during the day in advance of the position that you have indicated? If so, when and where? You indicated a position back of Pageland lane.—A. I do not.

Q. How long were you down in the neighborhood of this hill which you have marked with a cross during that day; up to what time?—A. We were down there the greater part of the day; we were on the extreme right all the time afterward. The cavalry remained on the extreme right until the morning of the 30th.

So that the cavalry was the only force, from the evidence as is shown here, that was then on this road upon which Porter was traveling.

Longstreet's force never crossed until at six o'clock. One brigade only was thrown down in support of the cavalry at a distance of over two miles from where Porter's command was.

Q. What time do you think you met General Longstreet between Hay Market and Gainesville?—A. It was about eleven o'clock.

Q. Was General Longstreet at the head of his column?—A. He was near the head of the column.

Q. Were there many troops in front of his command?—A. Not many.

Q. Were they advancing?—A. They were.

Q. Rapidly?—A. They were marching at an ordinary pace.

Major White was there as staff officer to General Stuart. General Stuart was in command of the cavalry and moving up the road to Longstreet. General Stuart stayed on his right all day, occupied his right from the time that Longstreet passed from Gainesville up to the close of that battle, until the next morning, the 30th of August. The evidence shows that none of these troops except cavalry were on that road at all. That is all that was in front of Porter, who had twenty-five thousand infantry in his front, as he states and tries to demonstrate.

Now, let us continue with Mr. White's evidence:

Q. State the style of march; how many front?—A. They were marching in column.

Q. How many front?—A. Marching in column of regiments, perhaps four abreast.

Q. Were they in close order?—A. Yes, sir.

Q. Would you swear it was eleven o'clock?—A. It was about eleven o'clock.

Q. You are confident that none of Longstreet's forces had passed through Gainesville before eleven o'clock?—A. I don't think they had.

Q. How did they appear to you; to be on top of a hill, or in a depression, or in woods, or by woods, or in an open field?—A. The position we occupied was a commanding one, of course. They were in a depressed situation from the position we occupied. We were on this hill and they were *here*. [Witness indicates.]

Q. In column, marching along the Manassas Gap Railroad?—A. Yes.

Q. Did you see the Manassas Gap Railroad right in their vicinity?—A. The road they were marching on was parallel to the Manassas Gap Railroad.

That is Porter's force marching on a road parallel to the Manassas Gap Railroad, as I indicated marked on the map, running to the left of the Manassas Gap Railroad all the way to the intersection there at Gainesville. [Indicating.]

Q. When you came back to that position did you see any Federal troops anywhere?—A. Yes. There were Federal troops off here. [Indicating the lines of the regiments.]

Q. When you came back did you see Longstreet's command?—A. I saw Longstreet's command on my way back from General Stuart; they came and formed in here. [Pageland lane.]

Here is the place [indicating] where they formed. There is Pageland lane over beyond that railroad:

Q. Did you remain in that position all day?—A. We were there most all day. Do you mean me individually?

Q. Yes.—A. No. I was backward and forward several times during the day. I went with messages from Stuart to Lee and Longstreet and to Jackson.

Q. Then, during that whole day, you were in the vicinity of Longstreet's troops, and knew of their position?—A. Yes; we were on his right.

Q. What time do you put it that you came back from General Jackson after being sent over by General Stuart?—A. Half-past two or three o'clock.

Q. Do you know of any action that occurred along the Warrenton pike—infantry?—A. I heard firing.

Q. What time was that?—A. In the evening.

Q. About what time?—A. General Jackson's command was engaged all the time.

Q. Was Hood's command engaged at all?—A. That evening they were.

Q. What time that evening?—A. I suppose about three o'clock in the evening they were engaged; two and a half to three o'clock.

Q. Were they engaged vigorously?—A. Quite a severe fight.

Q. Describe the action so far as you observed it.—A. I was not present. I didn't see it. I heard the firing; it lasted, I suppose, half to three-quarters of an hour.

'as it very vigorous?—A. It was a very sharp fight.
'as that the only occasion in which Hood's command was engaged that day, to
iowledge?—A. To my knowledge that is the only one until next morning.
ou say it was three o'clock?—A. Between two and three o'clock. It may have
ter three. It was after he had got in position.
ow long after he got in position?—A. He got in position, I suppose, about
or one o'clock. This engagement took place about two and a half, or may be
or three and a half.
'as it as late as five?—A. I can't recollect. I don't think it was.

will remember that Hood's division was a part of Longstreet's and the part of Longstreet's corps that was not in front of Porit engaged up by Groveton, fighting against the division of Reyand not over in this other direction.

'hat is your recollection about the time that that engagement took place upon
rrenton turnpike by Hood's troops?—A. I was away on the right. Of course
as fighting on the line. I don't know what troops were engaged, but I know
ood's troops had a fight there that evening. I don't know whether it was three
and a half; it may have been five o'clock. I know they had a sharp fight
nd I heard it.

* * * * * *

ssuming Hood's division to be in the place you have indicated by W³, and supere had been a battery placed on this rise of ground marked C, would that lfilled what you understood was the position of a battery firing off in the diof "W⁵"?—A. Yes. Just beyond a small branch there was a hill, a very fine
for artillery, and it was firing off in the direction of "W⁵." The highest
of that hill is where that battery was placed, or rather a park of artillery;
n or twenty of our guns were in that position.
ppose that the column of troops that you saw on that morning, or on the noon
ay, August 29, had been coming up the dirt road from Manassas Junction to
ville and was in the neighborhood of Dawkins Run, would that have been the
of the column that you say according to the map?
cted to as leading.)
he troops we saw approaching came more from the direction of Bristoe than
anassas.
herefore, what road indicated on this map best fulfills the direction from which
those troops coming?
cted to as leading.)
ney were approaching more in the direction from Bristoe than from Manassas.
herefore, what road best of the roads you see on this map shows the direction
hich you saw those troops coming? [Map explained to the witness.] Now,
were the Federal troops?—A. I remarked a while ago that the column that
vancing advanced more from the direction of Bristoe than Manassas.
*ere* is Bristoe and *there* is Manassas. Now, where do you put it, what direc-
Make a line indicating the direction.—A. They must have come in *here* or in

nen you are not positive that you saw them on the Manassas Gap Railroad?—
ver said I saw the Manassas Gap Railroad. I said I saw them on the road
parallel with the Manassas Gap Railroad. They were not marching on the
l. They were marching on a road that I supposed, from the position I occuas a line parallel with the Manassas Gap Railroad; they may have been on
d [from Gainesville to Stuart's Hill] and took position there [at +³.] From
sition we saw the columns coming up, but they were not on the railroad.

* * * * * * *

id you see the railroad in conjunction with seeing them, or at the same time in
ion with seeing them?—A. I could not say. I was not looking for railroads.
ooking for troops. I don't recollect now whether I saw the railroad or not,
my attention was directed to more important matters
ould you swear that those troops, Bristoe being *here* and Manassas *there*—that
oops were not on this road to Milford?—A. No; they were not in that direcall. They were off here [witness indicates in the direction of the Manasses
nesville dirt road].
ad you been to Bristoe that day?—A. No, sir; we had been there the day before.
ow do you know where Bristoe was?—A. Because I have been there a thousand
nce.
uld you see it from that position?—A. I don't know that you could see the
but I knew the general direction, and had been all over that country time and

d you see any of the shot fired fall near that column?—A. Yes, sir.

Q. What did the column do?—A. The column seemed to retire.
Q. Did you see them retire?—A. Yes; I saw them give back.
Q. How did they retire?—A. You know how troops retire. They gave back into a *piece of woods;* and just at that time I went off with a message, as I stated before—went off with a message to General Jackson from General Stuart.

Mark this language. It shows that Major White was talking of the very thing that Morell and Griffin were speaking of, about hiding their men in the woods, because White swears that when this piece of artillery, placed as I have shown, fired at the head of the column, that column retired. How did it retire? They retired in the woods, and where they were kept the whole day by the orders of Porter.

By Mr. MALTBY:

Q. You say that the artillery were stationed on the right of Jackson at the highest point on the ridge. Now, did Longstreet's line bend back from the line of Jackson, or did they make an angle more nearly approaching right angles?—A. I had nothing to do with Longstreet's position.
Q. But you saw it?—A. I passed in his rear several times.
Q. Take a pencil and mark Longstreet's line.—A. There was an angle formed between Jackson and Longstreet's line; Jackson's line ran along here. [Witness indicates.]
Q. Draw it in pencil. There is the Independent line of the Manassas Gap Railroad. [Indicated to the witness.]—A. Jackson's artillery was posted on this stony ridge.
Q. Draw a line where the nineteen or twenty guns were posted.—A. I had no connection with Longstreet's command or Jackson's. I passed in the rear of both lines several times with messages. I did not inspect their lines. I just speak from general recollection of their lines.
Q. Then you do not recollect precisely where any one line was?—A. I do; yes. I have indicated there is Jackson's line; his artillery was posted on this range of hills; General Longstreet formed here. [Witness indicates the different positions.] Their lines did not join; there was an angle there, an opening, and there is where the battery of artillery was.
Q. Draw Jackson's line and the cannon of Longstreet.—A. I have indicated it. [Witness indicates the line of the Independent line of the Manassas Gap Railroad.] His line did not go down that far [indicating Sudley Church]; it went to about there.
Q. Where do you run Jackson's line?—A. Jackson's line ran about in this direction. [Marked with a pencil.] That is about the direction of Jackson's line.
(The line indicated by the witness by means of a pencil is followed in ink by the recorder.)
Q. Where were these eighteen or twenty guns of Jackson's?—A. That did not have reference to Jackson's command; Jackson's artillery was posted on this range of hills back of his line of battle. This park of artillery is where $W^5$ is and $W^6$.
Q. You still say that Hood occupied that position, and that his right was where + and + + are?—A. There is where Hood was; right there.

* * * * * * *

The evidence of Rev. John Landstreet (board's record, p. 996). He was a minister, called in both armies a chaplain; he was a chaplain in the Confederate service belonging to this cavalry command. He saw the same thing, and here is what he says, after stating his residence to be in Baltimore County, Maryland:

Question. What did you do or see there which has impressed itself upon your attention?—Answer. There was considerable dust in this direction [witness indicates], indicating a body of troops; there was considerable down in this direction somewhere At any rate, General Stuart ordered some of the Fifth Cavalry to go out and cut brush and drag it along the road.
Q. [By Mr. MALTBY.] Did you hear the order?—A. Yes; to drag the brush along the Gainesville road, so as to serve as a feint and to convey the impression that there was a force coming down the Gainesville road. It was given, I distinctly recollect, to a member of the Fifth Virginia Cavalry.
Q. Who was the colonel of that regiment?—A. T. L. Rosser. We frequently after that conversed about it.
Q. What was done after that while you were in the neighborhood of Hampton Cole's?—A. There was some firing from this position [$+^2$], in the direction of this approaching force; and from my recollection of it the force was a considerable distance down. If 3 inches indicate a mile here, and if it was a life and death case, I would say that it was inside of a mile that they were off

Q. You should say it was a distance of about a mile?—A. I should say it was inside of a mile. It was not beyond a mile, certainly. [Witness indicates from Hampton Cole's.] There were several shots fired from this point in the direction down there.

Q. In what direction?—A. That depends entirely upon where the man was standing at the time, and what he was looking at. I did not charge my mind much with this Manassas Gap Railroad, though I knew it very well. But I would not say whether it was here or there [whether right or left]. It was pretty much in line with this railroad [Manassas Gap Railroad].

Q. What became of this column of troops upon those shots being fired?—A. I did not see them.

Q. They disappeared from your sight?—A. Yes, sir.

Q. Did they remain in the position they were in when they were fired upon?—A. No, sir. When my attention was directed to them they were where I could see the column, or a considerable portion of it; and they were marching in good order, close column.

Q. Do you recollect how many shots were fired at them?—A. I do not; but I am positive I didn't hear half a dozen; I know I did not.

Q. How long did you remain in that position in the neighborhood of Hampton Cole's that day?—A. I was sent off after that to hunt up the First Virginia Cavalry, not very far from there at that time; and I paid very little attention, indeed, from that time. When Longstreet came and formed there, General Jackson being in position, I came out from the command, and I was not in any of the fight at all except in the cavalry movements—skirmishing.

Q. Where did General Longstreet form his command?—A. It seems to me I struck a portion of Hood's command on General Longstreet's left before I got anywhere in the direction of Longstreet's right. They seemed to come in a good ways in the direction of General Longstreet's left, if they were not immediately on his flank.

Q. About where would you put them, north of the pike, across the pike, or south of the pike?—A. Which?

Q. Hood's division of that command?—A. From my recollection, there was a portion of Longstreet's command that crossed the Manassas Gap Railroad [the witness marks a point with a pen]; crossed it, I am sure, some distance, but how far I don't know. I do not think it was far. It extended, I think, up in this way. Hood's was in front of it; part of it in the body of the woods. My impression is that Hood came in a little in advance of Longstreet's left. I am certain I came to Hood before I came to Longstreet's force in position. [Marked "Longstreet" and "Hood."]

Q. What time of day was that that they were all in position? * * *—A. It is my recollection that it was somewhere between two and three o'clock.

Q. Do you know whether or not either Hood or the remainder of Longstreet's command were in advance to the east of Pageland lane at any time that day?—A. I do not.

Q. Was your position such that you could see the location of Hood and Longstreet during the afternoon?—A. O, yes; I could go where I pleased.

Q. How long did this action of that day continue?—A. The firing to my recollection continued up to about dark. It was near dusk. At times it was heavier than at others; and at times severer than I ever heard it in any engagement.

Q. What were your opportunities during that day of knowing the fact, provided General Hood had advanced east of Pageland lane? [Points of compass upon the map explained to the witness.] A. My answer is, that if I had a desire to know it, I could have known it very easily; but I didn't think about it at all. It was not in my mind. I was well acquainted with Hood and his command, and that made the impression upon me in coming to this point. I came from the direction where Jackson's command was, and passed this heavy battery at the time, though I think there were a few more guns there than I have heard stated to-day.

Q. In which direction, as you stood at Hampton Cole's facing the enemy, was Longstreet's command from you, with reference to your own person—to the left, right, front, or rear?—A. Looking down in the direction from which the enemy were coming, a portion of it was in my rear and a portion of it was not.

Q. At the time you arrived there at Hampton Cole's?—A. No, sir. They did not get in this position at the time I arrived at Hampton Cole's. I arrived at Hampton Cole's about ten or eleven in the morning.

Q. Where were the guns stationed in reference to Hampton Cole's?—A. The guns were pointed down a little to the left of the railroad.

Q. How near were you to the guns?—A. Right up by them.

Q. How much of that column did you see?—A. I could not say how many regiments there were. The column indicated that it was the head of a considerable body of men.

Q. What was that indication?—A. They were marching in close column.

Q. Would not a regiment march in close column?—A. Might not in as close column as that, and in good order. My judgment in the matter was that it was the advance of a large army.

Q. Did you see a quarter of a mile of that column?—A. No, sir.

Q. An eighth of a mile?—A. That is somewhere near it.

Q. Was it marching upon a plain?—A. I cannot tell you that. It did not appear to me as if they were coming up a hill, nor as if they were coming down a hill.

Q. As if they were marching upon a plain?—A. It looked pretty much as if they were on a level.

Q. Can you state whether any bushes were to their right or left, or trees?—A. No, I could not. My impression is that the country was pretty well open left and right of where I first saw them.

Q. Did you see them in flank at all?—A. No, sir.

Q. I don't know whether it is a military expression or not.—A. Do you mean did I see the rear of the enemy?

Q. No, sir; I mean the side of the column as it advanced.—A. No, sir; it was the shortest space of time before the firing commenced here at Hampton Cole's before I saw them no more.

Q. Was this column to your right or left?—A. From the position I was in, it was almost directly in my front. I think if I had advanced in a straight line I would have come up face to face with them. I was a little to the right of Hampton Cole's and looking right straight down.

* * * * * * *

Q. Did you see troops in the neighborhood of the Leachman house?—A. I knew there were troops there, but how I knew it I am not now prepared to say.

Q. How did they appear? Did they march out of sight in the rear, or did they retire in the bushes?—A. If you will let me use an illustration: It was a very common thing for a column of cavalry to advance, and one shot into a column of cavalry would make them disappear in the woods, and that was the end of it. I never saw a column that got out of sight quicker than this column did.

Q. How long did you remain at Hampton Cole's?—A. I suppose I staid there until—well, it was just after the brush expedition; shortly after that; and I went in the direction of Gainesville from there. I don't know but what I went right across to Gainesville; I think I did.

Q. How did you go?—A. I struck out on this Gainesville road that I had traveled hundreds of times toward Gainesville; pretty much along the line of the railroad.

Q. How long did you say that it was that you were at Hampton Cole's?—A. I said I was there until after twelve o'clock.

Q. Were you there about an hour in all?—A. I was there more than an hour; I was there fully an hour and a half.

Q. You passed along the Manassas Gap Railroad?—A. I passed along the Gainesville turnpike.

Q. What did you see on your route in the shape of troops?—A. I met some of, I think, Longstreet's forces on the Warrenton pike.

Q. Did you see any of Longstreet's troops?—A. I have no recollection of seeing them.

Q. Were there any troops marching on that turnpike?—A. There may have been. I did not pay any attention to it.

Q. How long did you stay away in the direction of Gainesville?—A. I staid away until about three or half-past three o'clock, I think.

Q. Then what did you do?—A. Then I returned to the First Regiment of Virginia Cavalry.

Q. Where was that?—A. If my recollection serves, it was between Hampton Cole's and Sudley.

Q. Was that the detachment that had been sent off to drag brush there that day?—A. No, sir. That was the Fifth Virginia Cavalry, commanded by Colonel Rosser.

Q. When did you first see the place where Longstreet's line was formed after you went off toward Gainesville?—A. I saw it for the first time a little after three o'clock.

Q. Was it then formed?—A. Yes; it was then formed in good order.

Q. All along the whole line?—A. Well, I did not ride along the whole line.

Q. Where were you?—A. I could not tell you how it was along the whole line. I rode in along *here* and I passed on out *here*. I passed around on Longstreet's left, and I found Hood's division in front of Longstreet, and rather extending beyond his left. [Witness indicates near Pageland Lane.]

Q. Then what did you strike?—A. I didn't know what the name of the road was. I made for Sudley neighborhood, and there I met a portion of the First Virginia.

Q. On Hood's left or Longstreet's left did you find artillery?—A. Yes, sir.

Q. Did Hood's line extend quite up to the artillery?—A. No, sir; it did not. *There was a gap.*

Q. How much of a gap?—A. I don't recollect how much it was, but it was a considerable gap.

Q. Half a mile?—A. I don't know whether it was that much, but it was a considerable gap, a considerable elevation.

Q. Do you know where that artillery was in reference to the Browner or Douglas house?—A. No, sir; I know nothing about houses there.

Q. Were the batteries in advance of Hood's line?—A. Well, rather.

Q. Much?—A. No, sir; they were rather a little in advance of his left.

Q. Was the distance between Hood's left and the right of the artillery as great as the gap?—A. According to my recollection, the battery was pretty nearly in the center of the gap.

Q. Did the line of the battery run in the same direction that Hood's line ran, or did Hood's line form an angle with the battery?—A. It was at an angle.

Q. Was the right of the battery much in advance of Hood's left?—A. No, sir; it was not much in advance, but still it was in advance.

Q. Was it a half-mile in advance?—A. Oh, no.

Q. Was it a quarter of a mile?—A. No, sir; I don't think it was that.

Q. Or an eighth?—A. I don't think it was that. It was a very short distance in advance. I would not say positively that it was in advance at all.

* * * * * * *

Q. About what time of day did you first see Longstreet's troops in position after that?—A. I saw them in position, I think, somewhere about three o'clock, or a little after three, or a little before three.

* * * * * * *

When the witness was asked to mark the position of Longstreet upon the map, he did so, and he put it almost exactly in the same position that Major White did, across over to the left of the Manassas Gap Railroad, with Stuart's cavalry on the right on this other road. It will be noticed that he speaks of this command coming down there, in this direction, meaning Porter's command of that day. He says, after they saw them coming, they having no troops they wanted to spare—the battle going on so hot on the left, General Stuart ordered Rosser, of the Fifth Virginia Cavalry, to cut brush to haul up and down the Gainesville road, upon which Porter's command was going—to kick up a dust as we might call it—so that Porter might think the whole Confederate army were coming. Rosser cut and hauled brush up and down that road.

Found in the Board's record, page 1007:

ROBERT C. SCHENCK, called by the recorder, and examined in the city of Baltimore, October 22, 1878 (present, the recorder, and Mr. Maltby of counsel for the petitioner), being duly sworn, testified as follows:

Question. Where do you reside?—Answer. Dayton, Ohio; temporarily residing in Washington, District of Columbia.

Q. What rank and command did you hold in the military service of the United States on the 29th August, 1862?—A. Brigadier-general of volunteers, commanding the first division, Sigel's corps.

Q. Finally you left the service with what rank?—A. Major-general. I was promoted to take effect August 30, 1862.

Q. In moving up to this position, did you have, in the morning of the 29th August, any enemy in front of you?—A. None that we felt, throwing forward skirmishers and supposing the enemy was present somewhere. Pretty early in the day a force of the enemy was developed upon this ridge, where there were a number of batteries placed to our right; that would be to the north of the turnpike road.

Q. Do you recollect passing that lane, Lewis lane No. 1?—A. I have a very indistinct impression of it. I have a remembrance floating in my mind having crossed some road which was not the turnpike, but I don't recall it distinctly.

Q. At what time of the day did you reach your farthest point in advance?—A. I think it must have been somewhere about the middle of the day; perhaps a little earlier than the middle of the day.

Q. Did you see General Reynolds's division during that day?—A. No; but I understood he was off on my left.

Q. Did you see General Reynolds himself during the morning or afternoon?—A. No; I think not. I don't recollect.

Q. How far did you get beyond the Gibbon's wood, in which the wounded of the night before were?—A. I don't know that we got beyond the Gibbon woods. My remembrance is that the farthest point we reached was somewhere about the west edge of the Gibbon wood—that is, the wood in which Gibbon's troops were engaged the night before. We found there his wounded and the evidence of the battle that had taken place.

Q. Was anything done with these wounded that you found there?—A. I ordered

all the men in that and the piece of woods this side of that, where there were, I think, a few scattered, to be sent to the rear and taken care of. I don't know that that is the Gibbon wood; I mean the wood farthest in advance that I reached was the wood in which the engagement took place. My impression is we did not at any period go farther in that direction than to, perhaps, the west edge of that wood.

Q. Look at the map; which piece of timber is it that you consider to be the Gibbon wood?—A. *This* I suppose to be the wood. [In which the word "Warrenton" ends; marked "S" on the Landstreet map.] That I suppose is intended for the wood in which Gibbon's engagement took place.

Q. How long did your division remain in that woods?—A. We must have been in that wood, altogether, two or three hours.

Q. Did you see any battery of the enemy while you were in that position? If so, where was it?—A. There was a battery off to our right somewhere which I recollect all the more distinctly because it seemed to me to be detached from the general line of the enemy, and I conceived the purpose of attempting to capture it, and sent one of my staff over to reconnoiter with a view to see how it might be approached. But about that time Milroy, who was engaged with the enemy off to my right, communicated with me, or General Sigel for him—I think the message came from Milroy himself—begging assistance, and I detached Stahel's brigade to support Milroy northeast of the pike, and then gave up the idea of attempting to capture that battery.

Q. That battery was in the neighborhood of where?—A. It was on a hill on my right; to the right of the wood where Gibbon's fight had taken place. It was upon elevated ground, and seemed to be the spur of a hill. I thought we might by a sudden and decisive movement upon it capture it.

Q. While you were up in this position, McLean's brigade, I understand, was on the left. What was the position of Reynolds's division of Pennsylvania Reserves as reported to you at that time in reference to your own position?—A. I did not see them, but they were reported to me as being upon our left, and I may add that it was reported to me that they had stationed a battery somewhere in advance of Gibbon's wood, I think Cooper's battery.

Q. In which direction was that battery operating?—A. I did not see the battery.

Q. At what time did you quit with your division this Gibbon wood?—A. I should think, to the best of my recollection, somewhere between one and three o'clock. I don't think I can be more positive than that. My recollection is that it was some time after noon.

Q. To what point did you go then with your division?—A. In consequence of reports made to me in reference to the movements of General Reynolds, I thought it best for me to fall back, and I came into a strip of woods which I suppose to be these [south of the syllable "ville" in "Gainesville"]. I formed in line of battle near the west edge of that woods. There we lay most of the afternoon.

Q. Up to what time?—A. I can scarcely tell you. I should think at least until the middle of the afternoon, perhaps later. I recollect withdrawing from that point from wood to wood as we had advanced. We found it quite late in the afternoon, or quite sunset, by the time I reached my original position. The whole distance, I should think, was about two miles from the point where we started in the morning to the furthest point to which we advanced.

Q. While you were in the Gibbon wood, what enemy, if any, did you see in your immediate front?—A. I cannot say that I saw any enemy in our immediate front. There were skirmishers in that direction, and as my skirmishers were thrown forward we would have an occasional shot, but there seemed to me at that time to be no enemy in my front, in my immediate front. The first intimation that I had that the enemy in considerable force were upon our left was through Colonel McLean, the commander of my second brigade, who told me that a messenger, or staff officer, or orderly, or some one from Reynolds, apparently with authority, had come to him, as he was in command of a brigade, and communicated the fact that the enemy were upon our left, and I think was coupled with the information that Reynolds intended to fall back. I tried to communicate with Reynolds again, but did not succeed, but I thought there was no occasion for immediately falling back; but not finding any response from General Reynolds, I concluded to withdraw slowly to at least a short distance and then come across an open space into the next wood [into a little strip marked $S^2$], where I rested the troops in line.

Q. While you were holding position in that little strip of woods, do you know whether or not the enemy obtained the possession of the Gibbon wood?—A. I am satisfied that they were not there in any force; they had their skirmishers thrown forward as I had men toward the Gibbon wood, and there were occasional shots fired with or without good cause for them, but there was no movement in force, nor was there indicated to me any presence of an enemy in force.

Q. Can you fix with any degree of relative certainty the time in the afternoon when you quit the little fringe of woods marked "$S^2$"; whether it was two, or three, or four, or five, or six o'clock?—A. The days in August are pretty long. I should say it was at

middle of the afternoon, or probably later. I reached my conclusion from ıg it by the movement forward and the gradual withdrawal of the troops. I hink it was after the middle of the afternoon.

lesire also to follow this evidence by putting in the report of the nder of the army, to show the position of our own troops during r, and to corroborate the fact that Griffin's brigade retreated back point stated, and to show the cause of the censure placed upon connection with being part of Porter's command, for his igno- s retreat that night, without any enemy whatever being in his

document is as follows:

rsement:] Report of Major-General Pope, commanding Army of Virginia. Op- of the Army of Virginia from August 9 till September 2, 1862. Received at ırters of the Army September 6, 1862. War Department, Adjutant-General's Vashington, September 30, 1878. Official copy. E D. Townsend, Adjutant-

HEADQUARTERS ARMY OF THE VIRGINIA, *September* 3, 1862.

RAL: I have the honor to submit the following brief sketch of the operations ırmy since the 9th of August.

ed from Sperryville, Little Washington, and Warrenton, with the corps of ınd Sigel and one division of McDowell's corps, numbering in all thirty-two d men, to meet the enemy who had crossed the Rapidan and was advancing eper.

ıovement toward Gordonsville had completely succeeded in drawing off a large ɔm Richmond, and in relieving the Army of the Potomac from much of the which threatened its withdrawal from the Peninsula.

ction of August 9, at Cedar Mountain, with the forces under Jackson, which ed his retreat across the Rapidan, made necessary still further re-enforcements nemy from Richmond; and by this time it being apparent that the Army of omac was evacuating the Peninsula, the whole force of the enemy concentrated Richmond was pushed forward with great rapidity to crush the Army of Vir- ɔfore the forces evacuating the Peninsula could be united with it. I remained r Mountain, and still threatened to cross the Rapidan until the 17th of August, h time General Robert Lee had assembled in my front, and within eight miles, the whole of the rebel army.

on as I ascertained this fact and knew that the Army of the Potomac was no n danger, I drew back my whole force across the Rappahannock on the night 17th and day of the 18th, without loss of any kind, and one day in advance of ɔposed movement against me. The enemy immediately appeared in my front pahannock Station and attempted to pass the river at that bridge and the ns fords above and below, but without success.

ine of the Upper Rappahannock, which I had been ordered to hold that the might be delayed long enough in his advance upon Washington to enable the rom the Peninsula to land and effect a junction with me, was very weak, as it e crossed at almost any point above the railroad bridge by good fords.

ıstant vigilance and activity, and much severe fighting for three days, the was gradually forced around from the railroad crossing to Waterloo Bridge, Warrenton.

time my force had been much diminished by actual loss in battle, and by fatigue ɔosure, so that although I had been joined by a detachment under General Reno other division of McDowell's corps, my force barely numbered forty thousand On the 22d a heavy rain fell, which rendered the fords of the river impassible nty-four hours. As soon as I discovered this, I concentrated my forces and d rapidly upon Sulphur Springs and Waterloo Bridge to drive back the forces nemy which had succeeded in crossing at those points. This was successfully nd the bridges destroyed. I passed one day, or rather part of one, at Warren- l beyond. The enemy still continued to move slowly around along the river, g every ford with artillery and heavy forces of infantry, so that it was impos- r me to attack him even with the greatly inferior forces under my command, t passing the river over fords strongly guarded, in the face of very superior s.

novement of Jackson toward White Plains, and in the direction of Thorough- ıp, while the main body of the enemy confronted me at Sulphur Springs and oo Bridge, was well known to me; but I relied confidently upon the forces I had been assured would be sent from Alexandria, and one strong division of I had ordered to take post in the works at Manassas Junction. I was entirely he belief that these would be there, and it was not until I found my communi-

cations intercepted that I was undeceived. I knew that this movement was no raid, and that it was made by not less than twenty-five thousand men under Jackson.

By this time the Army corps of Heintzelman, about ten thousand strong, had reached Warrenton Junction, one division of it, I think, on the very day of the raid. But they came without artillery, with only forty rounds of ammunition to the man, without wagons, and even the field and general officers without horses.

Fitz-John Porter also arrived at Bealeton Station near Rappahannock, with one of his divisions, forty-five hundred strong, whilst his other divisions were still at Barnett's and Kelly's Fords.

I directed that corps, about eighty-five hundred strong, to concentrate immediately at Warrenton Junction, where Heintzelman already was. This was accomplished on the evening of the 26th. As soon as it became known to me that Jackson was on the railroad it became apparent that the Upper Rappahannock was no ground. General Franklin with his corps arrived after dark at Centreville, six miles in our rear, while Sumner was four miles behind Franklin. I could possibly have brought up these corps in the morning in time to have renewed the action, but starvation stared both men and horses in the face, and broken and exhausted as they were, they were in no condition to bear hunger also. I accordingly retired to Centreville that night in perfect order.

Neither on Sunday nor on Monday did the enemy make any advance upon us. On Monday I sent to the Army corps commanders for their effective strength, which, all told, including Sumner and Franklin, fell short of sixty thousand men. Instead of bringing up thirty thousand men, Franklin and Sumner united fell short of twenty thousand men, and these added to the force I had, already wearied and much cut up, did not give me the means to do anything else for a day or two than stand on the defense. The enemy during Monday again began to work slowly around to our right for the purpose of possessing Fairfax Court House, and thus turning our rear.

Couch's division and one brigade of Sumner's had been left there, and I sent over Hooker on Monday afternoon to take command and to post himself at or in front of Germantown, at the same time directing McDowell to take position along the turnpike from Centreville to Fairfax Court House, about two miles west of the latter place. Heintzelman was directed to post himself in rear and support of Reno, who was pushed north of the road at a point about two miles and a half east of Centreville, to cover the turnpike, it being my purpose in the course of the night to mass my command on the right, in the direction of Germantown, where I felt convinced the next attack of the enemy would be made. Late in the afternoon of Monday the enemy made his demonstration upon Germantown, but was met by Hooker at that place, and by Reno, reinforced by Kearney, further west. The battle was very severe though short, the enemy being driven back a mile with heavy loss, leaving his dead and wounded.

In this short action we lost two of our most valuable and distinguished officers, Generals Kearney and Stevens.

By morning the whole of my command was massed behind Difficult Creek, between Flint Hill and the Warrenton turnpike, with the advance under Hooker in front of Germantown.

With the exception of Sumner the commanders of the army corps of the Army of the Potomac had continued persistently to inform me that their commands were and had been demoralized ever since they left Harrison's Landing; that they had no spirit, and no disposition to fight.

This latter statement their conduct in the various actions fully contradicted; but the straggling in those corps was distressing.

The full facts having been reported to you, I received on Tuesday afternoon the order to retire to the intrenchments near Washington, which was accordingly done on that day and the next in good order, and without the slightest loss. Banks, who had been left with the railroad train, cut off at Bristoe by the burning of the bridge, was ordered to join me on Monday at Centreville, which he did on the afternoon of that day.

This brief summary will explain sufficiently in detail the whole of the operations of the forces under my command during sixteen days of continuous fighting by day and marching by night.

To confront a powerful enemy with greatly inferior forces, to fight him day by day without losing your army, to delay and embarrass his movements, and to force him by persistent resistance to adopt long and circuitous routes to his destination, are the duties which have been imposed upon me.

They are of all military operations the most difficult and the most harassing, both to the commander and to his troops.

How far we have been successful I leave to the judgment of my countrymen.

The Armies of Virginia and of the Potomac have been united in the presence and against the efforts of a wary and vigorous enemy, in greatly superior force to either with no loss for which they did not exact full retribution. Among the officers who I feel bound to mention with special gratitude for their most hearty, cordial, and u

tiring zeal and energy are Generals McDowell, Banks, Reno, Heintzelman, Hooker, and Kearney, and many others of inferior rank, whom I shall take great satisfaction in bringing to the notice of the government.

The troops have exhibited wonderful patience and courage, and I cannot say too much for them. Our losses have been very heavy, but so far I have been unable to get accurate returns. I was informed by Generals Kearney and Hooker, who examined the field of battle on Friday, that the enemy's dead and wounded were at least double our own.

I am, general, respectfully, your obedient servant,

JNO. POPE,
*Major-General Commanding.*

Major-General H. W. HALLECK,
*General-in-Chief.*

We now desire to call attention to the reports of some of the Confederate generals fully sustaining the theory of the minority as to the guilt of Fitz-John Porter.

It will be remembered that General A. P. Hill's forces were a part of General Jackson's command; he was up with him prior to the arrival of Generals Lee and Longstreet. General Hill gives his different movements on the 24th, 25th, 26th, and 27th, and then refers to the 29th, the day on which General Porter failed to accomplish anything by disobeying the order of his commanding general. This is the report of Major-General A. P. Hill:

HEADQUARTERS LIGHT DIVISION,
*Camp Gregg, February* 25, 1863.

Lieutenant-Colonel C. J. FAULKNER, A. A. G.,
*Second Army Corps:*

COLONEL: I have the honor to submit the following report of the operations of my division from the crossing of the Rapidan, August 20th, to the repulse of the enemy at Castleman's Ferry, November 5th, inclusive.

* * * * * * *

The march was without incident of importance until arriving at the ford opposite Warrenton Springs. The morning after arriving (Sunday, the 24th) I was directed to occupy the hills crowning the ford.

* * * * * * *

Wednesday morning (August 27th) at Manassas Junction, Branch's brigade had a sharp encounter with a battery supported by the Twelfth Pennsylvania Cavalry. They were soon dispersed. * * * That night about twelve o'clock, the depot buildings, with an immense amount of commissary stores, and about two miles of loaded freight-cars, were burned, and at one o'clock I moved my division to Centreville; at ten a. m. (Thursday) moved upon the Warrenton pike, toward the stone bridge, when I received an order from General Jackson, dated battle-field of Manassas, eight a. m., that "the enemy were in full retreat, and to move down to the fords and intercept him." But, having just seen two intercepted dispatches from Pope to McDowell, ordering the formation of his line of battle for the next day on Manassas plains, I deemed it best to push on and join General Jackson. That evening (Thursday) there was a little artillery practice by some of my batteries on the enemy's infantry.

Friday morning, in accordance with orders from General Jackson, I occupied the line of the unfinished railroad, my extreme left resting near Sudley's Ford, my right near the point where the road strikes the open field, Gregg, Field, and Thomas in the front line, Gregg on the left, and Field on the right, with Branch, Pender, and Archer as supports.

The evident intention of the enemy this day was to turn our left and overwhelm Jackson's corps before Longstreet came up, and, to accomplish this, the most persistent and furious onsets were made by column after column of infantry, accompanied by numerous batteries of artillery. Soon my reserves were all in, and up to six o'clock my division, assisted by the Louisiana brigade of General Hays, commanded by Colonel Forno, with an heroic courage and obstinacy almost beyond parallel, had met and repulsed six distinct and separate assaults, a portion of the time the majority of the men being without a cartridge.

Friday being the 29th, you will see that the line of Jackson was behind the unfinished railroad, running from Sudley's Ford to Gainesville, or connecting with the Manassas Gap Railroad, which would throw the troops of Longstreet, supporting Jackson's command, away from Porter instead of in the direction of his corps.

Following that up, let call attention to the report of General D. R. Jones, who commanded a division of Longstreet's corps at the second battle of Manassas. You will find that Jones occupied the extreme right of General Longstreet, and inasmuch as it has been claimed that Longstreet was in front of Porter, and as General Jones was on the extreme right of Longstreet, Jones's report shows where he was and what he did:

RICHMOND, VA., *December* 8, 1862.

* * * * * * *

After the repulse of his efforts at flanking, the enemy withdrew his artillery to the plateau on which he had first appeared and kept up a very heavy fire till dark, when, appearances indicating his retreat, I advanced my command and bivouacked beyond the gap unmolested by the enemy. The intense darkness and ignorance of the fords over the creek in my front prevented pursuit.

My entire loss in this engagement was not more than twenty-five.

The number of the enemy engaged amounted to over eleven thousand, under the command of General Ricketts, as appeared from Northern papers. My division of three brigades was alone engaged on our side.

This was the 28th.

Early on the morning of the 29th I took up the line of march in the direction of the old battle-ground of Manassas—

Mark this language—

whence heavy firing was heard.

Early in the morning of the 29th Jones took up his line of march, having been back—in fact, he had been back with Longstreet's command beyond Gainesville, up near Thoroughfare Gap.

Arriving on the ground about noon, my command was stationed on the extreme right of our whole line—

What he means by that is the infantry line, not the cavalry line. He is speaking of their command as a command of infantry. He had the extreme right, he says, of their whole line—

and during the balance of that day was subjected to shelling, which resulted in a few casualties.

What shelling? Not the shelling from Porter's batteries, because the evidence shows that they fired but few shots. Jones's position at that time on the extreme right of Longstreet when they moved forward in the evening to take up their position again, threw him down where he came in contact with a battery from Reynolds' division, who was on the extreme left of the line near Groveton.

We now call attention to the report of General Stuart, commandant of Cavalry:

HEADQUARTERS STUART'S CAVALRY DIVISION,
ARMY OF NORTHERN VIRGINIA,
*February* 28, 1863.

* * * * * * *

That night (25th) I repaired to the headquarters of the commanding general, and received my final instructions to accompany the movement of Major-General Jackson, already begun. I was to start at two a. m., and upon arriving at the brigades that night at one a. m. I had reveille sounded and preparations made for the march at two. In this way I got no sleep, but continued in the saddle all night. I followed, by direction, the route of General Jackson through Amissville, across the Rappahannock at Hinson's Mill, four miles above Waterloo, proceeded through Orlean, and thence on the road to Salem, till, getting near that place, I found my way blocked by the baggage trains and artillery of General Jackson's command. Directing the artillery and ambulances to follow the road, I left it with the cavalry and proceeded by farm roads and by-paths parallel to General Jackson's route to reach the head of his column, which left Salem and The Plains early in the morning for the direction of Gainesville. The country was exceedingly rough, but I succeeded by the aid of skillful guides in

passing Bull Run Mountain without passing Thoroughfare Gap, and without incident worthy of record passed through Hay Market, and overtook General Jackson near Gainesville and reported to him. Ewell's division was in advance, and to my command was intrusted guarding the two flanks during the remainder of the pending operations, (26th).

As Lee's brigade passed Hay Market he received information of a train of forage-wagons of the enemy, and sent out promptly a regiment and captured it. Having made disposition above and below Gainesville on the Warrenton road with cavalry and artillery, I kept with the main portion on General Jackson's right, crossing Broad Run a few miles above Bristoe and intersecting the railroad to the right (south) of that point.

* * * * * * *

As soon as practicable I reported to General Jackson, who desired me to proceed to Manassas, and ordered General Trimble to follow with his brigade, notifying me to take charge of the whole. The Fourth Virginia Cavalry (Colonel Wickham) was sent around to gain the rear of Manassas, and, with a portion of Robertson's brigade, I proceeded by the direct road to Manassas. I marched until challenged by the enemy's interior sentinels and received a fire of canister.

* * * * * *

As soon as day broke the place was taken without much difficulty, and with it many prisoners and millions of stores of every kind.

* * * * * * *

During the 27th, detachments of Robertson's and Lee's brigades had great sport in chasing fugitive parties of the enemy's cavalry. General Jackson having arrived early in the day, took direction of affairs, and the day was occupied mainly in rationing the command; but several serious demonstrations were made by the enemy during the day from the north side, a part of the command marching by Centreville and a part directly to Stone Bridge (over Bull Run), detachments of cavalry were so arranged as to guard both flanks.

* * * * * * *

The next morning (28th) the main body of Robertson's rendezvoused near Sudley church. General Jackson's were massed between the turnpike and Sudley Ford, on Bull Run, fronting toward Manassas and Gainesville. Colonel Brien (First Virginia Cavalry) had to retire, being hard pressed by the enemy from the direction of Warrenton, and was on the turnpike covering Jackson's front toward Gainesville, and Rosser toward Manassas, where the enemy had also appeared in force early. The remainder of Lee's brigade were still detached on an expedition toward Alexandria. Early in the day a dispatch from the enemy had been intercepted, giving the order of march from Warrenton toward Manassas, and directing cavalry to report to General Bayard at Hay Market. I proposed to General Jackson to allow me to go up there and do what I could with two fragments of brigades I still had. I proceeded to that point, capturing a detachment of the enemy *en route*. Approaching the place by a by-path I saw indications of a large force there prepared for attack. About this time I could see the fight going on at Thoroughfare Gap, where Longstreet had his progress disputed by the enemy, and it was to establish communication with him that I was anxious to make this march. I sent a trusty man with the dispatch to the right of Hay Market. I kept up a brisk skirmish with the enemy, without any result, until in the afternoon, when, General Jackson having engaged the enemy, I quietly withdrew and hastened to place my command on his right flank. Not reaching General Jackson's right till dark, the fighting ceased, and the command rendezvoused as before, but the cavalry under Colonel Rosser had played an important part in attacking the enemy's baggage train. Captain John Pelham's battery of horse artillery acted a conspicuous part on the extreme right of the battle-field, dashing forward to his position under heavy fire.

Now he comes to speak of the 29th. Here is the statement of Stuart. You will find that Stuart makes this kind of a report: He commences on the 25th, goes over his operations on the 25th, then to the 26th, then to the 27th, and then to the 28th. He gives his operations on each day, and then he comes to the 29th.

The next morning (29), in pursuance of General Jackson's wishes, I set out again to endeavor to establish communication with Longstreet, from whom he had received a favorable report the night before. Just after leaving the Sudley road, my party was fired on from the wood bordering the road, which was in rear of Jackson's lines, and which the enemy had penetrated with a small force it was afterward ascertained, and captured some stragglers. They were between General Jackson and his baggage at Sudley.

I immediately sent to Major Patrick, whose six companies of cavalry were near Sudley, to interpose in defense of the baggage, and use all the means at hand for its

protection, and order the baggage at once to start for Aldie. General Jackson, also, being notified of *this movement in his rear, sent back infantry* to close the woods. Captain Pelham, always at the right place at the right time, unlimbered his battery, and soon dispersed that portion in the woods. Major Patrick was attacked later, but he repulsed the enemy with considerable loss, though not without loss to us, for the gallant major himself, setting the example to his men, was mortally wounded. He lived long enough to witness the triumph of our arms, and expired thus in the arms of victory. The sacrifice was noble, but the loss to us irreparable.

I met with the head of General Longstreet's column between Hay Market and Gainesville.

Mark, this report sustains exactly what White said, and what Longstreet, Carrico, and all testify in reference to Longstreet's corps.

I met with the head of General Longstreet's column between Hay Market and Gainesville, and there communicated to the commanding-general General Jackson's position and the enemy's.

The commanding-general was General Lee. He was in company with Longstreet at that time, as the evidence shows.

I then passed the cavalry through the column so as to place it on Longstreet's right flank, and advanced directly toward Manassas—

That is, Stuart advanced with his cavalry toward Manassas—

while the column kept directly down the pike to join General Jackson's right.

Mark what he says. He says he passed by the column. What column? Longstreet's column. He says the column kept directly down the pike. Stuart says that he went with his cavalry down this road, but Longstreet kept on from Gainesville down the pike in the direction where the battle was being fought at Groveton. What else?

I selected a fine position for a *battery on the right, and one having been sent to me, I fired a few shots at the enemy's supposed position, which induced him to shift his position.* General Robertson, who with his command was sent to reconnoiter farther down the road toward Manassas, *reported the enemy in his front.* Upon repairing to that front, I found that *Rosser's regiment was engaged with the enemy to the left of the road, and Robertson's videttes had found the enemy approaching from the direction of Bristoe Station toward Sudley.*

The prolongation of his line of march would have passed through my position, which was a very fine one for artillery as well as observation, and *struck Longstreet in flank*

Stuart says, that watching this command, afterward seeing this command of Porter by extending its line of march, it would have struck Longstreet in the flank. What then did he do?

I waited his approach long enough to ascertain that there was *at least an army corps, at the same time keeping detachments of cavalry dragging brush down the road from the direction of Gainesville, so as to deceive the enemy* (a ruse which Porter's report shows was successful), *and notified the commanding general, then opposite me on the turnpike,* that Longstreet's flank and rear were seriously threatened, and of the importance to us of the ridge I then held.

Mark this: General Stuart says that when he saw this command by moving forward would have struck General Longstreet on the flank and rear, he continued to keep brush dragged up and down to create a dust. "From the direction of Gainesville so as to deceive the enemy (a ruse which Porter's report shows was successful)." A ruse which Porter's own report shows was successful! How does it show that it was successful? Because Porter reports twenty-five thousand infantry in his front, and here General Stuart says there was nothing in his front. But they were dragging brush up and down the road, and making believe that there were was a heavy force there.

It was dust and brush by which he was attacked, and not men. He was not attacked by an army, but with pine brush, mules dragging them perhaps. Twelve thousand infantry stopped at Dawkins Branch twenty-four hours with a mule drawing brush up and down the road, a

few cavalry watching it and laughing at it, and one or two old pieces of artillery shooting cut-off pieces of railroad iron over at the boys. General Stuart goes on to say:

Immediately upon the receipt of that intelligence Jenkin's, Kemper's, and D. R. Jones's brigades and several pieces of artillery were ordered to me by General Longstreet, and being placed in position fronting Bristoe, awaited the enemy's advance.

They were placed in position, and he shows the position in which they were placed. There were three brigades and that is what I said yesterday. But three brigades ever pretended to oppose the advance of this force, and it was after the brush was drawn in the road that they were thrown in position, and the position was up on the railroad. They were thrown one brigade in advance, not on the road Porter was coming, but between the railroad and the road on which he was approaching.

After exchanging a few shots with rifle-pieces this corps withdrew toward Manassas, leaving artillery and supports to hold the position till night.

Brigadier-General Fitz-Lee returned to the vicinity of Sudley, after a very successful expedition, of which his official report has not been received, and was instructed to co-operate with Jackson's left. Late in the afternoon the artillery on this commanding ridge was, to an important degree, anxiliary to the attack upon the enemy, and Jenkins's brigade repulsed the enemy in handsome style at one volley, as they advanced across the cornfield. Thus the day ended, our lines having considerably advanced.

You see that late one of these brigades (Jenkins's) was engaged and repulsed the enemy, which shows that they were far up on the left of our troops that were in battle, and not on the road of Porter, as the troops that advanced on him advanced through the cornfield. Only a few shots were fired at Porter, and he withdrew into the woods. Part of them went to Manassas—a part to one place and a part to another, leaving a few infantry and artillery in support during the night.

There are the facts, and you may take the strongest testimony there is in this case on either side—if General Porter's friends will claim that these three brigades that were sent down there were placed straight across the road to meet his advance, they were not on his road, and one of them engaged in battle with another force, we venture the assertion that the three brigades did not have in them over five thousand infantry. But, suppose the three brigades had ten thousand men in them, it would have been an even fight, and Porter certainly ought not to have refused to fight. There are the twenty-five thousand confederates who stood in his front and impeded his onward march, according to his statement! But these men were not in his front; they were on the Manassas Railroad, and not the Gainesville dirt road.

General Longstreet, in his report, sustains this proposition. He says:

HEADQUARTERS NEAR, WINCHESTER, VIRGINIA,
*October* 10, 1862.

* * * * * * *

Early on the 29th (August) the columns were united, and the advance to join General Jackson was resumed. The noise of battle was heard before we reached Gainesville. The march was quickened to the extent of our capacity. The excitement of battle seemed to give new life and strength to our jaded men, and the head of my column soon reached a position in rear of the enemy's left flank and within easy cannon-shot.

On approaching the field some of Brigadier-General Hood's batteries were ordered into position, and his division was deployed on the right and left of the turnpike, at right angles with it, and supported by Brigadier-General Evan's brigade. Before these batteries could open the enemy discovered our movements and withdrew his left. Another battery (Captain Stribling's) was placed upon a commanding position to my right, which played upon the rear of the enemy's left and drove him entirely from that part of the field. He changed his front rapidly, so as to meet the advance of Hood and Evans.

Three brigades, under General Wilcox, were thrown forward to the support of the left, and three others, under General Kemper, to the support of the right of these commands. General D. R. Jones's division was placed upon the Manassas Gap Railroad—

Not on this road that Porter was on, but the Manassas Gap Railroad. That is where these three brigades were ordered that are reported in Stuart's report, so that only cavalry, brush, and dust are all that have yet appeared on Porter's road—

upon the Manassas Gap Railroad, to the right and in echelon with *regard to the three last brigades.* Colonel Walton placed his *batteries in a commanding position between my line and that of General Jackson*, and engaged the enemy for several hours in a severe and successful artillery duel. At a late hour in the day *Major-General Stuart reported the approach* of the enemy in heavy *columns against my extreme right.* I withdrew General Wilcox with his three *brigades, from the left, and placed his command in position to support Jones in case of an attack against my right. After some few shots the enemy withdrew his forces, moving them around towards his front, and about four o'clock in the afternoon began to press forward against General Jackson's position. Wilcox's brigades were moved back to their former position, and Hood's two brigades*, supported by Evans, were quickly pressed forward to the attack. At the same time Wilcox's three brigades made a like advance, as also Hunton's brigade, of Kemper's command.

These movements were executed with commendable zeal and ability. Hood, supported by Evans, made a gallant attack, driving the enemy back till nine o'clock at night. One piece of artillery, several regimental standards, and a number of prisoners were taken. The enemy's entire force was found to be massed directly in my front, and in so strong a position that it was not deemed advisable to move on against his immediate front; so the troops were quietly withdrawn at one o'clock the following morning. The wheels of the captured piece were cut down, and it was left on the ground. The enemy seized that opportunity to claim a victory, and the Federal commander was so impudent as to dispatch his government, by telegraph, tidings to that effect. After withdrawing from the attack, my troops were placed in the line first occupied, and in the original order.

During the day Colonel S. D. Lee, with his reserve artillery, placed in the position occupied the day previous by Colonel Walton, and engaged the enemy in a very severe artillery combat. The result was, as the day previous, a success. At half past three o'clock in the afternoon I rode to the front for the purpose of completing arrangements for making a diversion in favor of a flank movement then under contemplation. Just after reaching my front line I received a message for re-enforcements for General Jackson, who was said to be severely pressed. From an eminence near by, one portion of the enemy's masses attacking General Jackson were immediately within my view and in easy range of batteries in that position. It gave me an advantage that I had not expected to have, and I made haste to use it. Two batteries were ordered for the purpose and one placed in position immediately and opened. Just as this fire began I received a message from the commanding general, informing me of General Jackson's condition and his wants. As it was evident that the attack against General Jackson could not be continued ten minutes under the fire of these batteries, I made no movement with my troops. Before the second battery could be placed in position the enemy began to retire, and in less than ten minutes the ranks were broken and that portion of his army put to flight. A fair opportunity was offered me, and the intended diversion was changed into an attack. My whole line was rushed forward at a charge. The troops sprang to their work, and moved forward with all the steadiness and firmness that characterized war-worn veterans. The batteries continuing their play upon the confused masses completed the work of this portion of the enemy's line, and my attack was, therefore, made against the forces in my front. The order for the advance had scarcely been given when I received a message from the commanding general, anticipating some such emergency, and ordering the move which was then going on, at the same time offering me Major-General Anderson's division. The commanding general soon joined me, and a few moments after Major-General Anderson arrived with his division. The attack was led by Hood's brigade, closely supported by Evans. These were rapidly re-enforced by Anderson's division from the rear, Kemper's three brigades, and D. R. Jones's division from the right and Wilcox's brigade from the left. The brigades of Brigadier-Generals Featherston and Pryor became detached and operated with a portion of General Jackson's command. The attacking columns moved steadily forward, driving the enemy from his different positions as rapidly as he took them. My batteries were thrown forward from point to point, following the movements of the general line. These, however, were somewhat detained by an enfilade fire from a battery on my left. This threw more than its proper share of fighting upon the infantry, retarded our rapid progress, and enabled the enemy to escape with many of his batteries, which should have fallen into our

hands. The battle continued until ten o'clock *at night, when utter darkness put a stop to our progress.* The enemy made his escape across Bull Run before daylight. Three batteries, a large number of prisoners, many stands of regimental colors, and twelve thousand stands of arms, besides some wagons, ambulances, &c., were taken.

We now desire to call attention to the report of General Robert E. Lee of the first day, second Bull Run, August 29, 1862. It is as follows:

The next morning, the 29th, the enemy had taken a position to interpose his army between General Jackson and Alexandria, and about ten a. m. opened with artillery upon the right of Jackson's line. The troops of the latter were disposed in rear of Groveton, along the line of the unfinished branch of the Manassas Gap Railroad, and extended from a point a short distance west of the turnpike toward Sudley Mill, Jackson's division, under Brigadier-General Starke, being on the right; Ewell's, under General Lawton, in the center, and A. P. Hill on the left. The Federal Army was evidently concentrating upon Jackson, with the design of overwhelming him before the arrival of Longstreet. The latter officer left his position, opposite Warrenton Springs, on the 26th, being relieved by General R. H. Anderson's division, and marched to join Jackson. He crossed at Kingson's (Hinson's) Mills in the afternoon and encamped near Orlean that night. The next day he reached the White Plains, his march being retarded by want of cavalry to ascertain the meaning of certain movements of the enemy from the direction of Warrenton, who seemed to menace the right of his column.

On the 28th, arriving at Thoroughfare Gap, he found the enemy prepared to dispute his progress. General D. R. Jones's division being ordered to force the passage of the mountain, quickly dislodged the enemy's sharpshooters from the trees and rocks and advanced into the gorge. The enemy held the eastern extremity of the pass in large force, and directed a heavy fire of artillery upon the road leading through it and upon the sides of the mountain. The ground occupied by Jones afforded no opportunity for the employment of artillery. Hood, with two brigades, and Wilcox, with three, were ordered to turn the enemy's right—the former moving over the mountain by a narrow path to the left of the pass, and the latter farther to the north, by Hopewell Pass. Before these troops reached their destination the enemy advanced and attacked Jones's left, under Brigadier-General G. T. Anderson. Being vigorously repulsed, he withdrew to his position at the eastern end of the gap, from which he kept up an active fire of artillery until dark, and then retreated. Generals Jones and Wilcox bivouacked that night east of the mountain, and on the morning of the 29th the whole command resumed the march, the sound of cannon at Manassas announcing that Jackson was already engaged. Longstreet entered the turnpike near Gainesville, and moving down toward Groveton, the head of his column came upon the field in rear of the enemy's left, which had already opened with artillery upon Jackson's right, as previously described. He immediately placed some of his batteries in position, but before he could complete his dispositions to attack, the enemy withdrew, not, however, without loss from our artillery. Longstreet took possession (position?) on the right of Jackson, Hood's two brigades, supported by Evans, being deployed across the turnpike, and at right angles to it. These troops were supported on the left by three brigades under General Wilcox, and by a like force on the right under General Kemper. D. R. Jones's division formed the extreme right of the line, resting on the Manassas Gap Railroad. The cavalry guarded our right and left flanks, that on the right being under General Stuart in person. After the arrival of Longstreet, the enemy changed his position, and began to concentrate opposite Jackson's left, opening a brisk artillery fire, which was responded to with effect by some of General A. P. Hill's batteries. Colonel Walton placed a part of his artillery upon a commanding position between Generals Jackson and Longstreet, by order of the latter, and engaged the enemy vigorously for several hours. Soon afterward General Stuart reported the approach of a *large force from the direction of Bristoe Station, threatening Longstreet's right. The brigades under General Wilcox were sent to re-enforce General Jones, but no serious attack was made, and after firing a few shots the enemy withdrew. While this demonstration was being made on our right a large force advanced to assail the left of General Jackson's position, occupied by the division of General A. P. Hill.* The attack was received by his troops with their accustomed steadiness, and the battle raged with great fury. The enemy was repeatedly repulsed, but again pressed on the attack with fresh troops. Once he succeeded in penetrating an interval between General Gregg's brigade, on the extreme left, and that of General Thomas, but was quickly driven back with great slaughter by the Fourteenth South Carolina Regiment, then in reserve, and the Forty-ninth Georgia, of Thomas's brigade. The contest was close and obstinate; the combatants sometimes delivered their fire at ten paces. General Gregg, who was most exposed, was re-enforced by Hays's brigade, under General Forno, and successfully and gallantly resisted the attack of the enemy until, the ammunition of his brigade being exhausted and all its field officers but two killed or wounded, it was

relieved, after several hours of severe fighting, by Early's brigade and the Eighth Louisiana Regiment.

General Early drove the enemy back with heavy loss, and pursued about two hundred yards beyond the line of battle, when he was recalled to the position on the railroad, where Thomas, Pender, and Archer had firmly held their ground against every attack. While the battle was raging on Jackson's left, General Longstreet ordered Hood and Evans to advance, but before the order could be obeyed Hood was himself attacked, and his command became at once warmly engaged. General Wilcox was recalled from the right and ordered to advance on Hood's left, and one of Kemper's brigades, under Colonel Hunton, moved forward on his right. The enemy was repulsed by Hood after a severe contest, and fell back, closely followed by our troops. The battle continued until nine p. m., the enemy retreating until he had reached a strong position, which he held with a large force. The darkness of the night put a stop to the engagement, and our troops remained in their advanced position until early next morning, when they were withdrawn to their first line. One piece of artillery, several stands of colors, and a number of prisoners were captured. Our loss was severe in this engagement. Brigadier-Generals Field and Trimble and Colonel Forno, commanding Hays's brigade, were severely wounded, and several other valuable officers killed or disabled, whose names are mentioned in the accompanying reports.

Here General Lee shows that Jones was the extreme right of Longstreet, and that Jones's right rested on the Manassas Gap Railroad, which was far from being on Porter's road, so that by no witness of all the confederates can Porter get anything but a small force of cavalry in his front.

William B. Lord testified before this Board that at the time Fitz-John Porter was being tried he told him (Lord) that he was not loyal to Pope. That was exactly what we tried him for. I see one of my friends smiles. Let us see what Lord swore to. Here is a letter that he wrote at the time to his own wife. He did not write it to be made public. He was a friend of Fitz-John Porter, and he says:

Question. Will you state, substantially, what that interview was, and what General Porter said?—Answer. I had been directed by the judge-advocate of the court to proceed to the rooms of General Porter and to look for some telegrams that had been introduced in evidence that day, and that had been mislaid in some way. While there looking over some papers General Porter made the remark, "I was not loyal to Pope; there is no denying that."

Q. Do you recall anything else that he said in that connection?—A. I cannot say that I do, and I doubt if I should recall that now but for the peculiarity of the circumstance, and the fact that I made a record of it myself a few days afterwards; otherwise, I think likely I should have forgotten it.

Q. That was during the progress of his trial before a general court-martial?—A. It was.

THE PRESIDENT OF THE BOARD. The decision is that the letter is admissible for the purpose stated by counsel, namely, not to prove the fact, but to test the credibility of the witness.

By the RECORDER:

Q. You have stated in your cross-examination that the feelings which had actuated you you expressed at the time you wrote that letter to your wife. It was not called for by the counsel for the petitioner. I will call for it. Please let me know what you stated on the subject, if you have that letter here.

(Witness produces a book.)

A. Shall I read?

Q. Just that part and no more.

The witness read as follows:

"I have been a little bothered about General Fitz-John Porter. I had to go to his room on Monday to get some papers that belonged to the court that he had had to copy. One of the reporters of the New York Times was along with me. While in the room, after some conversation, General Porter made the remark, 'Well, I wasn't loyal to Pope; there is no denying that.' Now, that is really the charge against him before the court-martial—that he did not do his duty as an officer before the enemy, and that he did not act rightly toward General Pope, his commanding officer. General Porter said what he did in the privacy of his own room; without thinking of the effect of his words. After thinking it over, I have concluded it better not to say anything about it now, though I would not promise as much for that newspaper correspondent."

Q. That is your letter-press copy of your letter to your wife?—A. It is.

Q. Do you retain usually letter-press copies of your letters to your wife?—A. All of my correspondence.

Q. Do you know whether or not some one may not have heard the same language, at some other time, or an affidavit made on the subject and communicated to Senator Chandler?—A. I know nothing about that.

That is what Lord wrote to his wife. He was called before this board to testify, and he testified to these facts. If Fitz-John Porter admitted to his own friends—because Lord was his friend—if Fitz-John Porter would make such a statement to any party during his trial, that he was not loyal to General Pope.

I know that the General of the Army would say no such thing to any subordinate of his, for he would expect him if he were a subordinate to do his duty, and if he did not do his duty he would arrest and try him for the dereliction. He would not engage in little notes to suggest to him to be loyal.

On the 1st day of September, 1862, after Fitz-John Porter had performed as he did on the 28th and 29th of August, General McClellan wrote Porter a letter. McClellan is the officer of whom Porter kept speaking all the time in his dispatches to General Burnside, saying: "My star is up, and I hope Mc's is too." "Mc" was ever foremost in his mind, and "Mc" writes him a note on the 1st of September, three days after the battle. He says:

WAR DEPARTMENT,
*September* 1, 1862—5.30 p. m.

I ask you for my sake, that of the country, and of the old Army of the Potomac that you and all friends will lend the fullest and most cordial co-operation to General Pope in all the operations now going on.

The distresses of our country, the honor of our arms are at stake, and all depends now upon the cheerful co-operation of all in the field. This week is the crisis of our fate. Say the same thing to all my friends in the Army of the Potomac, and that the last request I have to make of them is that for their country's sake they will extend to General Pope the same support they ever have to me. I am in charge of the defenses of Washington. I am doing all I can to render your retreat safe, should that become necessary.

GEORGE B. McCLELLAN,
*Major-General.*

Major-General PORTER,
*Centreville, Commanding Fifth Corps.*

General McClellan, the shining star in the eye of Porter all the time, whom he almost worshipped, had become so suspicious of Porter's conduct, and so well satisfied of his bad faith toward General Pope, that on the 1st day of September he says: "Be faithful for my sake and for the country's sake; be honest; support Pope." Why did General McClellan tell Porter to support Pope if he thought he had supported him? Why did he say: "I am in charge of the defenses of Washington and will make your retreat safe if you have to retreat"? To give Porter encouragement. It may have been to keep his mind off Alexandria, for it seemed to be running in that direction all the time, to let him know they were fixing a place for him in Washington City if he had to come back.

We desire to say that in collating this testimony we have avoided as much as possible taking the evidence that was before the court-martial which convicted Fitz-John Porter; but have taken nearly all the evidence from that which was taken before the board, consisting of witnesses who were the immediate officers under command of General Fitz-John Porter, and the Confederate officers who were present at the engagement and opposed to our forces. The evidence on the first proposition, viz, the violation of the order of the 27th of August, is

clear and conclusive, and shows beyond question or doubt that Fitz-John Porter did not only disobey said order, but that he did not in the least degree attempt to obey it. The evidence on this point, in connection with his letters to General Burnside, shows clearly that his desire was not to aid or assist General Pope in gaining a success, but to do everything in his power to prevent it.

In reference to the second order issued to him on the 29th of August, the evidence clearly shows that he hesitated and took time, did not move, and used every excuse that he possibly could to justify himself in the disobedience of said order.

The third order, directing him to proceed to Gainesville, was disobeyed in every particular. He did not attempt to move his troops to Gainesville. He delayed on the road. Gave Longstreet an opportunity of passing through and joining Jackson without the least attempt on his part to prevent it.

The order given him at 4.30 o'clock in the afternoon, to move forward and attack the enemy at once, was evaded, disobeyed, and his whole action in the premises showed a determination willfully to disobey the orders of his superior officer. The evidence clearly shows that he prevaricated and misled his own officers, and sent discouraging dispatches through to McDowell, which were taken to Pope's headquarters, declaring that he had been attacked by the enemy and was then retreating. This just at the time when the heaviest fight was going on at or near Groveton.

The evidence clearly shows that McDowell and King, who were on the same road that he was in the morning, without any other orders than what he (Porter) had, moved to the right, as it was their duty to do, and engaged with the enemy.

The evidence further shows that the only way that General Pope could get any obedience of orders from him (Porter) was to issue to him a peremptory order to report to him in person with his command on the field, and to note the time of the receipt of said order, &c.

The evidence clearly shows that he misstated the facts in reference to a force being in his immediate front. That there was no force, except a small force of cavalry, during the whole day in his front on the road upon which he was marching. That the dust in his front that he pretended was a force, was made by a mule drawing brush up and down the road, about which General Stuart, of the Confederate army, makes sport of him in his report.

The letter of General McClellan to him (Porter) three days after the battle shows that McClellan understood him to have disobeyed orders and failed to support Pope, and therefore wrote a letter to encourage him to do so, to save his friends from disgrace.

When the evidence collected by this unauthorized board (the report of which is presented by the majority) is examined in connection with their report, it shows clearly that the report is based upon something entirely outside of the testimony, and not upon the evidence that they themselves had before them.

That we, the minority, therefore protest against the passage of the bill restoring Fitz-John Porter to the Army.

The success of said bill would be a misfortune to the country, and no source of danger is more insidious, its progress more rapid, and its corruption more sure than that legislation which is in the interest of private favoritism at the expense of public justice. No case can be found in the annals of courts-martial where a more just verdict was rendered

than in the case where Fitz-John Porter was tried, convicted, and dismissed from the Army.

We protest against the passage of the bill for the reason that it would stand hereafter as an incentive to military disobedience in the crisis of arms, and as an assurance of forgiveness and emolument for the most dangerous crime a soldier can commit.

Respectfully submitted.

JOHN A. LOGAN.

S. Rep. 662, pt. 2——6

:ONGRESS, } SENATE. { REPORT
Session. } { No. 663.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

:ORGE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 355.]

Committee on Claims, who have had under consideration Senate 5, for the relief of Ella Carroll, formerly Ella Long, adopt the re- ade by the Judiciary Committee in the Forty-sixth Congress, re- o. 476, as follows:

ears that Ella Long and her late brother, Jeremiah D. Long, deceased, were itimate children, by the same mother, of one Daniel Long (now deceased), a of the city of Washington.

l Long, in his lifetime, purchased and caused to be conveyed the land de- in the bill to Jeremiah D. Long. Daniel Long has deceased, leaving surviv- a person claiming to be his widow, and leaving some property claimed by her legitimate heirs, to which, of course, Ella Long has no claim. Jeremiah D. as also died intestate without issue and without a widow. The consequence the lot of land mentioned in the bill has escheated to the United States on of the inability of Ella Long to inherit from her natural brother.

these circumstances the committee are of opinion that the United States ought e to Ella Long the title so escheated.

t is possible that the United States may have some other interest property than by escheat, the committee deem it safe to amend l so as to release only such title as is vested by escheat. They nend the passage of the bill as amended.

O

:ESS, } SENATE. { REPORT
n. } { No. 664.

# THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

LL, from the Committee on Public Lands, submitted the following

# REPORT:

[To accompany bills S. 1396, 1666, and 1940.]

*ee on Public Lands, to whom were referred bills S.* 1396, 1666, *and* 1940, *submit the following report:*

of the act approved June 15, 1880, provided that alternate and in railroad limits which had been put in market prior 1860, should be reduced in price to $1.25 per acre.
96 provides that the lands in question shall be sold at re- vithout a new offering of said lands at public sale; also l declares valid sales of said land made without such new provides for refunding to purchasers of land since the ap- e act of June 3, 1880, the excess paid over $1.25 per acre, 366 confirms the entries made at $1.25 per acre.
nissioner of the General Land Office recommends a substi- nerely confirms sales already made under a misconstruction

tute should pass for reasons fully set out by the following ne Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
*Washington, April* 21, 1882.

bill 1396, "Relating to the public lands of the United States, and an act entitled 'An act relating to the public lands of the United ed June 15, 1880, and confirming certain sales made thereunder," was ferred to the Commissioner of the General Land Office. I have the e herewith copy of his report on the subject, under date of yesterday, ts inclosures.
pectfully,

H. M. TELLER,
*Secretary.*

LUMB,
*man Committee on Public Lands, U. S. Senate.*

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DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
*Washington, D. C., April* 20, 1882.

he honor to acknowledge the receipt by departmental reference, and letter from Hon. P. B. Plumb, chairman Senate Committee on Public tting, for an expression of your views thereon, a copy of Senate bill latory of the act of June 15, 1880, and confirming certain sales made

under that act. Senate bill No. 1396 is identical with bill H. R. No. 3492, upon which I made a report to the department under date of February 21, 1882. I respectfully inclose herewith a copy of said report, with accompanying draft of a bill suggested as a substitute for bill H. R. 3492, which I request may be considered as my report on bill S. 1396.

The conclusions to which I arrive are that the entries allowed after the passage of the act of June 15, 1880, and prior to the receipt at the local land offices of the instructions of this office issued under said act, dated October 10, 1881, should be confirmed, but that I do not deem it my duty to recommend concurrence in the remaining proposition of the bill that lands reduced in price by that act should be made subject to private entry without the usual notice provided for by existing laws.

The letter of Senator Plumb and copy of bill S. 1396 are herewith returned.

Very respectfully,

N. C. McFARLAND,
*Commissioner.*

Hon. HENRY M. TELLER,
*Secretary of the Interior.*

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DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
*Washington, D. C., February 21, 1882.*

SIR: I have the honor to acknowlege the receipt by your reference for a report thereon of bill H. R. 3492, entitled "A bill relating to the public lands of the United States, and construing and amending the act entitled 'An act relating to the public lands of the United States,' approved June 15, 1880."

The second section of the act referred to (21 Stat., p. 237) provided that the price of lands that were subject to entry at the date of that act and which were raised in price to $2.50 per acre prior to January, 1861, by reason of the grant of alternate sections for railroad purposes, should be reduced to $1.25 per acre.

The lands affected by this section were the alternate reserved sections within railroad limits that had been offered at public sale at $2.50 per acre before January, 1860, and were subject to entry at that price June 15, 1880.

The declaration of the act that the price of such lands should be reduced to $1.25 per acre fixed the minimum price absolutely at $1.25 per acre, but did not subject such lands to sale at private entry without further proceedings.

It is a uniform principle governing the administration of the land laws, that private entries are never permitted until after the lands have been offered at public sale at the minimum price provided by law. This principle has been recognized as fundamental by the Supreme Court of the United States (Eldred *v.* Sexton, 19 Wall., 189), and has never been departed from in the practice of the land department.

In the case cited the court said: "It is true the lands in question were once offered at public sale at $2.50 per acre, but the reason of the rule required that they should be again offered to the highest bidder, because their condition as to price had been changed and there had been no opportunity for competition at the reduced price. Congress meant nothing more than to fix $1.25 as their minimum price, and to place them in the same category with other public lands not affected by land-grant legislation. When they were withdrawn from the operation of this legislation, and their exceptional status terminated, the general provisions of the land system attached to them, and they could not, therefore, be sold at private entry, until all persons had the opportunity of bidding for them at public auction."

The circular of instructions issued by this office under the act of June 15, 1880, failed to embrace any specific directions to the local land officers, calling their attention to the general requirement applicable to the lands that had been reduced in price by that act, that such lands could only be sold at private entry after having been offered at public sale at the reduced price. The local officers, therefore, in some districts, permitted a considerable number of private entries to be made on this class of lands, although there had been no reoffering of the same at public auction. These entries were suspended by this office by reason of the want of legal authority for permitting them to be made. Such entries were, however, made in good faith by the respective parties. They were allowed by the local officers through a misapprehension of the law, and in consequence of the absence of proper instructions by this office. Under this state of facts the legislative relief desired by the parties interested is in my opinion proper to be afforded.

Bill H. R. 3492, however, goes further than this, and proposes a legislative construction of the second section of the act of June 15, 1880, which, while it would save the equitable rights of prior innocent purchasers, would also open all the lands affected by said second section to cash purchase at private entry without requiring a new offering at public sale.

›perate as a change of the rule in these cases which the Supreme Court
› be fundamental in the land system of the country. It would also ope-
e to the extent of these lands of the legislative policy of Congress, which
tained since the passage of the homestead act in 1862, of reserving the
›r actual settlement.
fected by the second section of the act of June 15, 1880, were offered at
›re the passage of the homestead act and before the adoption of the pol-
At that time the policy of Congress was to dispose of the public lands
The policy adopted since then is to withhold lands from public sale.
and beneficence of this policy have never been doubted. It is founded
iple that the general interests of the country are best served by secur-
e soil to actual occupants and cultivators, and preventing the monopoly
v hands.
n which this policy may have failed has been the degree in which it has
d out.
›e of the bill under consideration is to make this change of principle and
›e question is one of legislative discretion. I therefore respectfully re-
3492 without my approval.
:e, however, that in the class of lands affected by the act of June 15,
provisions of law authorizing their offering at public sale exist now as
'ormer offering, these provisions being found in the original acts author-
›f the public lands in the territory northwest of the Ohio River, in the
Louisiana and Orleans, in the Mississippi Territory, and in Florida. It
mpetent for the President to proclaim for sale at the reduced price any
nds affected by said act without further legislation.
›n with the desirable purpose of relieving innocent purchasers whose
lready been allowed through inadvertence, I have the honor to submit
›ft of a bill prepared with this object in view, in accordance with your
January 21, 1882.
pectfully,

N. C. McFARLAND,
*Commissioner.*

KIRKWOOD,
*ry of the Interior.*

ittee recommend the indefinite postponement of bills S. 1396

H CONGRESS, } SENATE. { REPORT
st Session. } { No. 665.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

r. BECK, from the Committee on Finance, submitted the following

# REPORT:

[To accompany bill S. 1867.]

*Committee on Finance, to whom was referred the bill (S. 1867) for the elief of the sureties of George W. Sands, deceased, respectfully report:*

hat the facts in the case have been carefully examined. They sub- as a part of their report the following letters of the Secretary of the asury and Commissioner of Internal Revenue, and in view thereof ommend adverse action and the indefinite postponement of the bill.

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TREASURY DEPARTMRNT,
*May 27*, 1882.

R: I have the honor to inclose herewith a letter from the Commissioner of Internal enue, dated the 25th instant, giving a report of the facts called for in your letter he 17th instant, in reference to bill S. 1867, for the relief of the sureties of George Sands, deceased.

ou will see from this that the records of the Commissioner's Office show that Mr. ds was informed of his deficiency *more than three years before* his death, and was *re-edly* called upon to explain or make good the balance shown to be due to the ted States, and that detailed statements showing the exact condition of his ac-nts were furnished him from time to time, and he was informed what was required lose his accounts.

or these and other reasons stated by the Commissioner, there would seem to be no l ground for granting the relief requested.

ne inclosures of your letter are herewith returned as requested.

Very respectfully,

H. F. FRENCH,
*Acting Secretary.*

on. JUSTIN S. MORRILL,
*Chairman of Committee on Finance, United States Senate.*

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TREASURY DEPARTMENT,
OFFICE OF THE INTERNAL REVENUE,
*Washington, May 25*, 1882.

r: I have the honor to acknowledge the receipt of the letter of Senator Morrill, rman of Committee of Finance of the Senate, inclosing petition of the sureties of ge W. Sands, late collector internal revenue fifth district, Maryland, and copy ll S. 1867, referred to this office on the 19th instant for report.

e bill directs the repayment to the sureties on the official bond of late Collector s, of the sum of $4,712.24 being the amount paid by them "on the ground of an rent deficiency in the accounts of George W. Sands after his death, said defici- being believed to be for taxes assessed and placed in the hands of said Sands, not collected by him and not collectible."

the petition of the sureties it is stated "that said Sands paid over as required

all moneys claimed to be due from him to the government, and made earnest and persistent efforts to have his accounts verified and closed in the Treasury Department, but was unable to get the same effected, * * * and that if the accounting officers of the government had, with reasonable promptness, adjusted the accounts, * * * he would have been able to explain any apparent discrepancies * * * and show that no part of the sum claimed was justly due by him."

The records of this office do not bear out these statements, but, on the contrary, show that late Collector Sands entered upon duty December 10, 1864, and retired from office August 31, 1866, a period of one year, eight months and twenty-two days; that upon the final adjustment of his accounts, a balance was found to be due from him to the United States of $10,600.31 on account of money actually collected by Mr. Sands, or his deputies, and not accounted for.

A part of this deficiency is shown by the reports made to this office by Mr. Sands himself, and the remainder was ascertained by his successor in office, late Collector A. P. Gorman, as reported to this office by late Collector Stanton.

The records of the office also show that Mr. Sands was informed of this deficiency more than three years before his death, and repeatedly called upon to explain or make good the balance shown to be due to the United States, and that detailed statements showing the exact condition of his accounts were furnished him from time to time, and he informed what was required to close his accounts.

It also appears that all of the outstanding taxes on assessment lists receipted for by Mr. Sands, which were transferred to his successor as uncollected, were subsequently accounted for, with the exception of $219.58, either by collection, abatement, or by evidence that they had previously been collected by Mr. Sands or his deputies, so that there is no evidence that any part of the balance found to be due to the United States represented uncollected taxes, except possibly the $219.58 above referred to, which was never satisfactorily accounted for.

The records also show that Mr. Sands received as salary and commissions a net compensation, exclusive of payments to deputies, clerks, &c., of over $4,600 per annum.

As it appears from the foregoing statements that the sum paid by the petitioners was for money justly due to the United States, and that there is no evidence that any part of this money was stolen from him by dishonest deputies, I can see no good reason for granting the relief proposed.

The letter of Senator Morrill and inclosures are herewith returned.

Respectfully,

GREEN B. RAUM,
*Commissioner.*

Hon. CHARLES J. FOLGER,
*Secretary of the Treasury.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 666.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1293.]

*The Committee on Military Affairs, to whom was referred bill S. 1293, have duly considered the same, and submit the following report:*

This bill provides for the sale of the Fort Wilkins military reservation, in the extreme northern portion of the Northern Peninsula of the State of Michigan. Your committee referred the bill to the Secretary of War for information, and received the following in reply:

WAR DEPARTMENT,
*Washington City, May 12, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 8th ultimo, transmitting bill S. 1293, providing for the sale of the Fort Wilkins military reservation, Michigan, and, in response to your request for certain information with regard to the same, to invite your attention to the inclosed report of the Adjutant-General, dated the 10th instant, to whom the subject was referred.

The property is no longer required for military purposes, and there is no objection on the part of this department to the passage of the bill.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. F. M. COCKRELL,
*Of Committee on Military Affairs, United States Senate.*

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HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE,
*Washington, May 10, 1882.*

SIR: I have the honor to return herewith the communication of April 8, 1882, from Hon. F. M. Cockrell, of the Senate Committee on Military Affairs, who incloses for information, &c., S. 1293, Forty-seventh Congress, first session, "to provide for the disposition of the Fort Wilkins military reservation, at Copper Harbor, in the State of Michigan," referred to this office for report, and to state as follows:

The post of Fort Wilkins was established May 28, 1844. It is located on Lake Superior, at Copper Mine Harbor, 10 miles from Keweenaw Point. The military reservation declared thereat by Executive order dated August 19, 1853, embraces lots 2 and 3 of section 33 and lot 5 of section 34, township 59 north, range 28 west, Michigan, the area being about 320 acres.

The surface is reported as level and the soil as rocky and unproductive, the only productions being copper and an abundance of hard wood, which, however, is not of a desirable quality for building purposes. The climate is mild in summer, but in winter is liable to extremes of temperature, the average being 41° F. The locality is very healthy.

The post was abandoned in 1870, the troops having been withdrawn August 30 of that year, since which time it has been unoccupied for military purposes, the buildings at present being in charge of a keeper, Mr. William Frisise, of Copper Harbor, appointed by the Quartermaster's Department, his compensation consisting of free occupancy of one of the buildings.

The following is a list of the buildings at the post in 1870, taken from "Descriptions of Military Posts and Stations," published in 1872:

Three buildings, officers' quarters, containing seven sets, log and frame.

Two buildings, men's barracks, 65 by 21 feet; two kitchens, with mess-rooms, 28½ by 21 feet; log and frame.

Four buildings, 30 by 17½ feet, log and frame.

One two-story frame store-house, 47 by 24 feet.

One log building used for storage, 30½ by 23½ feet.

One one-story log and frame hospital, 33 by 22 feet.

One guard-house, log and frame, 25 by 31 feet.

One stable, log, 39 by 24 feet.

One bake-house, 24 by 19½ feet.

One magazine, stone, arched, 13½ by 13 feet.

One ice-house, 16 by 13½ feet.

The population of Keweenaw County, in which Fort Wilkins is situated, is, according to the last census, 4,270,

The nearest town is Copper Harbor, with a population (according to Rand & McNally's Atlas) of 75, and distant 1½ miles from the post.

Eagle River, about 25 miles distant, has (according to Rand & McNally) a population of 500.

The post being located on the extreme northern point of the Northern Peninsula of Michigan, the country surrounding it is not thickly settled.

In July, 1870, the commanding officer reported that "the garrison is completely isolated from the outside world from early in November until late in April, and sometimes until late in May, during which time navigation ceases, and then the only communication is by mail carried by men on snow-shoes." Since that date, however, as indicated by the latest railroad guides and maps, the railroad system has been extended to L'Anse, on the Keweenaw Bay, a distance of 60 miles from Fort Wilkins, and the post can be reached at all seasons by daily line of stages from L'Anse (or steamers when navigation is open) to the copper regions.

The military reservation of Fort Wilkins (with others) was reported to the present Congress as no longer desired for military purposes, with recommendation of the department that authority be granted to dispose of the same. (*Vide* H. Ex. Doc. No. 39, Forty-seventh Congress, first session; also, bill H. R. 4322, identical with bill S. 1293.)

Upon reference to the department commander and the Quartermaster-General, no additional information has been obtained upon the subject of Senator Cockrell's communication.

I have the honor to be, sir, very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General.*

Hon. SECRETARY OF WAR.

The following is the history and description given in H. Ex. Doc. No. 39, Forty-seventh Congress, first session, page 42:

FORT WILKINS, MICH.

Post established May 28, 1844.

Located on Lake Superior, at Copper Mine Harbor, 10 miles from Keweenaw Point.

Reservation declared by the President August 19, 1853, embracing lots 2 and 3 of section 33 and lot 5 of section 34, township 59 north, range 28 west, Michigan.

Post directed to be discontinued by Special Order 90, Department of the Lakes, August 15, 1870, and troops withdrawn August 30, 1870.

The Secretary of War recommended to Congress relinquishment of the reservation in letter December 20, 1870, to House of Representatives, and in letter to same body dated March 5, 1874, he called attention to former letter, and recommended that authority be granted to dispose of the reserve. (*Vide* H. Ex. Doc. No. 176, Forty-third Congress, first session.)

In letter of May 25, 1874, the Secretary of War transmitted to the House of Representatives, for the information of the Committee on Military Affairs, in compliance with a request of said committee, a copy of report of General Hancock in regard to the quantity of land, and the value of buildings thereon, included in the reservation. The buildings are in charge of an agent appointed by the Quartermaster's Department. They are of log and frame, and not of any great value.

The reservation is wholly abandoned, and is not and will not be any longer needed for any military purposes, and nothing will be gained by maintaining it. Your committee recommend certain amendments to said bill, and, as so amended, recommend its passage.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 667.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. BECK, from the Committee on Finance, submitted the following

# REPORT:

[To accompany bill S. 1003.]

*e Committee on Finance, to whom was referred the bill (S. 1003) for the relief of Weed & Co., respectfully report:*

That the subject-matter has been carefully considered. The facts in e case are fully set forth in the accompanying letters of the Secretary the Treasury and the Commissioner of Internal Revenue, which are de a part of this report:

TREASURY DEPARTMENT,
*March* 10, 1882.

IR: I have the honor to inclose herewith the letter of the Commissioner of Internal Revenue, dated the 6th instant, giving the information called for in your letter of 1st instant in regard to bill S. 1003, for the relief of Weed & Co.

You will see that several claims are embraced in this bill, and that none of them re presented to the Commissioner of Internal Revenue within the time fixed by the tute of limitations. It is for your committee to pass upon whatever reasons may presented by the claimants for setting aside that statute in their cases.

But if it should be decided to give them any relief, I suggest that it would be to the t interest of the government to refer these claims to the Commissioner of Internal Revenue, with power to take proof and ascertain upon satisfactory evidence whether full amounts assessed, or any part thereof, have been paid; whether the cotton in h case was assessed upon its gross weight, or whether any, and if so what, allowe was made for the weight of rope and bagging; and whether in each case, where claimant was the factor and paid the tax, he did not recoup himself by charging same to his principal; the Commissioner to be authorized to refund so much of h claim as he shall be satisfied that justice and equity demand, subject to the approval of the Secretary of the Treasury.

Very respectfully,

CHAS. J. FOLGER,
*Secretary.*

Hon. JUSTIN S. MORRILL,
*Chairman of Committee on Finance, United States Senate.*

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TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
*Washington, March* 6, 1882.

IR: I have the honor to return herewith the letter from the Committee on Finance, ited States Senate, inclosing bill S. No. 1003, for the relief of Weed & Co., referred you to this office for report on the 2d instant.

he bill provides for the payment to the parties named therein of the sum of 95.57.

here are no formal claims on file in this office in the names of the parties designated he bill.

n August last Mr. A. P. H. Stewart filed in this office what might be termed inal claims for the refunding of taxes alleged to have been paid on tare of cotton in

New Orleans, La., by C. A. Weed, E. A. Witters, C. A. Weed & Co., and Weed, Witters & Co.

It was understood at the time of filing these informal claims that this office had no authority to consider them, as they had not been presented within the time prescribed by section 3228, Revised Statutes.

The vouchers filed by Mr. Stewart have been compared with the assessment lists on file in this office, and assessments aggregating the following amounts have been found, viz:

| | |
|---|---|
| Against E. A. Witters | $8 44 |
| Against C. A. Weed | 2,096 54 |
| Against Weed, Witters & Co | 5,269 02 |
| Against C. A. Weed & Co | 25,015 48 |
| Total | 32,389 48 |

In November, 1865, assessors in some of the districts were instructed to make a reasonable allowance for the weight of bagging and rope in assessing the tax on cotton.

Prior to November, 1865, there was no general rule for the allowance of tare, and, indeed, it does not appear that there was any established and uniform rule for the allowance of tare in assessing cotton in New Orleans prior to the act of July 13, 1866, which fixed the tare at 4 per cent.

Claims for the refunding of taxes paid on tare of cotton have been adjusted in this office upon the basis that the tare was equal to four per cent. of the gross weight of each bale or package. But evidence has been required from each district showing what, if any, allowance was made for tare when the assessments were made.

If the assessments detailed above were made upon the gross weight of the cotton, and the full amount thereof has been paid, then the bill is an equitable one.

There is no evidence on file in this office showing that the full amounts assessed have been paid, and I am not at all satisfied that the cotton was assessed upon its gross weight.

The manner of weighing cotton in New Orleans, and whether or not any allowance was made for tare prior to July 13, 1866, was long a subject of doubt in this office.

In 1878 I caused a careful investigation to be made at New Orleans into the manner of weighing and assessing cotton for taxation. The facts ascertained by said investigation satisfied me that in the great majority of cases an allowance was made by the weighers of cotton equal to the rope and bagging, and that the assessments were made in accordance with the weights thus rendered.

The further fact was brought to light that these claims for refunding were almost invariably made by factors who had no pecuniary interest in the cotton otherwise than their commission for its sale, and that the taxes they paid to the government constituted part of the charges in their accounts with their principals, and were deducted as other charges, and the balance remitted to the owners of the cotton.

I am not prepared to state the facts in regard to the cases in question.

Very respectfully, your obedient servant,

GREEN B. RAUM,
*Commissioner.*

Hon. CHARLES J. FOLGER,
*Secretary of the Treasury.*

**Your committee therefore make an adverse report, and recommend that the bill be indefinitely postponed.**

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 668.

IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. Morrill, from the Committee on Public Buildings and Grounds, submitted the following

# REPORT:

[To accompany bill No. 1875.]

*The Committee on Public Buildings and Grounds, to whom was referred Senate bill No. 1875, have had the same under consideration, and beg leave to report as follows:*

1. That they have felt constrained by a long observed usage to recommend no more than one building, and certainly not more than two buildings, for any one State, at any one session of Congress, and therefore propose to amend Senate bill No. 1875 so as to authorize only a public building at Harrisonburgh, Va., where it seems to be as much needed as at any place in the State.

2. Harrisonburgh is immediately on the line of the Valley Railroad, and is situated in the heart of the beautiful and fertile valley of the Shenandoah, and is a thriving town of 4,000 inhabitants. It is the center of an internal revenue district, and is the county seat of Rockingham, a county with 900 square miles of territory, a population of 30,000 inhabitants, and an assessed value of real and personal property of nearly $2,000,000.

3. Here a United States court is held for a subdistrict comprising fourteen counties and two cities (Staunton and Winchester) with a population of 186,882 persons, an area of 5,670 square miles, and an assessed value of real and personal property of $60,000,000.

4. The business of this court, as evidenced by its records, is 10 new suits, brought in the last year, and there are now on the civil docket 34 suits, involving the sum of $192,000, and 28 criminal cases, or a total of civil and criminal cases, 62.

5. Here, at Harrisonburgh, a suitable public building is much needed for the proper accommodation of United States courts, their officers, suitors, and attorneys, and for the suitable care and safe keeping of the records—records which evidence property rights of large value, pending and adjudicated, especially under the late bankrupt law; and here, too, suitable accommodations are sadly needed for post-office purposes. Besides, for all these purposes and the conduct of the business of the internal revenue the government is put to much cost for annual rents, and the sessions and proceedings of its courts are frequently exposed to inconvenience and interruptions by the fixed terms of the State courts.

6. The receipts of the internal revenue district, of which Harrisonburgh is the center, and which comprises entirely the territory embraced

within that subdistrict of the court, amounted the last year to a quarter million of dollars.

7. The State of Virginia paid to the United States Government an internal revenue tax for the last fiscal year, ending June 30, 1881, the sum of $6,063,105, and for the period embraced within the years 1873 and 1881, both inclusive, she paid $85,138,622.

8. Of *all* the States only *seven* have exceeded Virginia in the amount of internal revenue tax paid into the Federal treasury, whether the single year of 1881, or the period of years from 1873 to 1881, inclusive, be taken as the measure of contribution to the government coffers.

9. For these sufficient and other reasons the committee recommend that Senate bill No. 1875, as amended to provide for a public building at Harrisonburgh, do pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 669.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 975.]

*The Committee on Claims, to whom was referred the bill (S. 975) for the relief of Levi Wilson, beg leave to report:*

That in 1877 the claimant became a contractor with the Interior Department to furnish a large quantity of beef at certain stations for the Indians. In the settlement of his accounts there was a disagreement between him and the department as to the proper construction of his contract. The claimant insisted on a construction by which $1,163 would have been added to his compensation. The department rejected this construction, and he now claims relief for this difference.

We do not consider that we are called on to express an opinion as to the true construction of the contract. The claimant had a plain remedy to enforce his demand, if it was just, by suit in the Court of Claims, and to that tribunal he should have applied.

The committee recommend that the bill for his relief (S. 975) be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 670.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. JONES, of Florida, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 537.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 537) to carry into effect the recommendations of the board of admirals, convened pursuant to the joint resolution approved February 5, 1879, in the case of Commander Henry Glass, United States Navy, respectfully submit their report:*

Upon examination into the merits of this bill your committee find that this officer was one of the four on the active list who, out of the twenty-three who submitted their complaints to the Le Roy board, made good their complaints of injustice done to them by the promotions made over them under the act of July 25, 1866. Prior to that act, Commander Glass stood at the head of his class, and five officers, McGregor, Harris, Cassel, Evans, and Coffin, who stood on the list, respectively, three, four, twenty-five, twenty-nine, and forty-five numbers below him, were unjustly promoted over him.

The records show that during the late war this officer participated in over fifteen engagements with forts and batteries in Charleston Harbor, and in the Saint John's, Stono, North Edisto, and Broad Rivers, in South Carolina, bearing himself with gallantry and receiving most flattering commendations from his commanding officers. None of those passed over him had as good battle record as he.

The report of the board of admirals, to which he submitted his complaint, is as follows, to wit:

## REPORT OF SPECIAL BOARD.

The board, after mature consideration of the case of Lieutenant-Commander Henry Glass, United States Navy, and all the papers submitted to it, hereto annexed, find that signal injustice was done to this officer by the promotions made in conformity with the act approved July 25, 1866.

The records on file in the department show that Lieutenant-Commander Glass participated in all the general engagements with forts and batteries in Charleston Harbor from July 18, 1863, to September 8, 1863; engagements with batteries in Stono River, South Carolina, December 25, 1864, and July 3 to 11, 1864; engagements with batteries in North Edisto River, South Carolina, February 9, 1865, and capture of Georgetown, S. C., in all of which he performed faithful and efficient service.

The record of this officer also shows high professional qualifications and attainments.

The board recommend that Lieutenant-Commander Henry Glass, United States Navy, be restored to his original position on the Navy list, next after Commander E. M. Sheppard.

WM. E. LE ROY,
*Rear-Admiral and President.*
STEPHEN D. TRENCHARD,
*Rear-Admiral.*
GEO. B. BALCH,
*Rear-Admiral.*
JAMES C. DULIN,
*Recorder.*

With such a record before the committee, and such a report from the distinguished officers who composed that board of admirals, your committee must recommend that the bill which will carry out the conclusions of the board in his case be passed.

O

# IN THE SENATE OF THE UNITED STATES.

JUNE 21, 1882.—Ordered to be printed.

ROLLINS, from the Committee on Naval Affairs, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill S. 537.]

an act of Congress, approved July 25, 1866, Congress authorized in promotions to be made of—

cers who have rendered the *most efficient* and *faithful* service during the recent and who possess the *highest* attainments and qualifications.

e law imposed upon the then Secretary of the Navy the delicate of making these promotions. It was his duty to select the officers in his judgment, "had rendered the most efficient and faithful e," "and who possessed the highest attainments and qualifica-," and promote them as directed by Congress. In making his selection vised with a number of the great admirals who had commanded the al fleets engaged in the war. Congress had the year previous ), by a joint resolution, ordered—

t any officer of the Navy, by and with the advice and consent of the Senate, may vanced, not exceeding thirty numbers in rank, for having exhibited eminent and icuous conduct in battle, or extraordinary heroism (13 Stat. at L., p. 424).

ıder the authority of this joint resolution and the act of July 25, the Secretary proceeded to select and nominate to the Senate the rs who, in the opinion of himself and his advisory board, had all ualifications required by the terms of the law, and these nomina- were confirmed by the Senate.

nong the officers so selected were Lieutenants (now commanders) les McGregor, Ira Harris, jr. (since resigned), Douglas R. Cas- since dead), Robley D. Evans, and George W. Coffin, and they promoted above Commander (then lieutenant) Henry Glass.

might be mentioned that the officers thus promoted were not ap- nts for promotion. They were ignorant of the action of the Secre- of the Navy until the nominations were sent to the Senate. The tary, with the whole record of the department before him, was osed by Congress to be the proper judge of the relative qualifica- and merits of the officers; and to him was entrusted the duty h he discharged.

w, after a lapse of fifteen years, it is claimed by the officer named e bill that he was "unjustly passed over" by the Secretary in ng his selection for promotion and advancement under the law, Congress is asked to determine, by special legislation, that he also d have been advanced by the Secretary and his advisors as prop- among the officers who had exhibited—

inent and conspicuous conduct in battle, or extraordinary heroism; [or] who endered the most efficient and faithful services during the war, and possessed ghest professional attainments and qualifications.

The minority might well be content to submit the foregoing statement of the case to show the entire absence of any justice or equity in the bill under consideration. No better evidence is needed of the wisdom of the Secretary in passing over this officer in making his promotions under the law than is furnished by himself in the claim now presented to the Senate. True worth is proverbially modest, and officers possessing the highest professional attainments and qualifications are not, as a rule, those who boast of their own merits.

But the minority desires to express its condemnation of the policy proposed in the bill. The present relative position of this officer has existed undisturbed since the close of the war, and it is a well-recognized fact that security of tenure of rank among officers of a military organization is essential to good discipline and efficiency, and that changes, such as the bill proposes, overturn such security.

It is not the complaint of the officer named in the bill that he had lost a number which he wished to regain, but that he was not advanced as others were under the act of 1866.

In conformity with the resolution approved July 1, 1870, the Secretary of the Navy issued the following circular letter to the officers of the Navy, viz:

NAVY DEPARTMENT,
*Washington, January 24, 1871.*

A Board of officers has been organized under an act of Congress approved July [illegible], 1870, for the purpose of examining into the cases of such officers as may deem themselves unjustly passed over by promotions made in conformity with the act of Congress approved July 25, 1866. The Board will meet at the Navy Department on the [illegible] proximo, and all officers concerned are hereby notified to present their claims for consideration by the board, either in person or in writing addressed to Vice-Admiral S. C. Rowan, president of the board, at the Navy Department, as soon as practicable.

GEO. M. ROBESON,
*Secretary of the Navy.*

The receipt of the circular letter was acknowledged by Commander Henry Glass, March 3, 1871.

This Board reported as follows:

The Board, after a careful exmination of all the papers submitted by Lieutenant-Commander Henry Glass, and a copy of his record taken from the files of the department, all of which are hereunto attached, find that his war service, though fair, is not equal to those who were promoted over him by selection under the act approved July 25, 1866.

The Board, therefore, do not recommend Lieutenant-Commander Glass for restoration to his original position on the Navy list.

In 1879 a naval board was organized in conformity with a joint resolution to the effect—

That the Secretary of the Navy is hereby authorized to organize a Board of three officers, not below the grade of rear-admiral, who shall examine into the case of Commander Bushrod B. Taylor and such other officers of the Navy as did not have opportunity, from any cause whatever, to appear before the Board created by virtue of the joint resolution of July 1, 1870, as may deem themselves unjustly passed over by the promotions made in conformity to the act of Congress approved July 25, 1866; and such officers shall have the right to appear in person and present to such Board their cause of grievance. The Board so organized shall report their conclusions to the Secretary of the Navy, who shall report the same to Congress.

This resolution is clear, and says that the Board shall examine into the cases of such officers only—

As did not have opportunity, from any cause whatever, to appear before the Board created by virtue of the joint resolution of July 1, 1870.

Congress aimed to limit the jurisdiction of the Board of 1879 so as to exclude not only all officers who had appeared before the Board of 1870,

officers who had an "opportunity" to appear, whether they themselves of it or not.
theless the Board of 1879, without the slightest authority in s jurisdiction of this case and recommended that "Lieut. Com- Henry Glass, United States Navy, be restored to his original on the Navy list next after Commander E. M. Shepard"; and have pressed upon the attention of Congress the illegal and un- ed action of a board of officers in order to influence special legis-

g submitted his claim for advancement to the Board organized e act approved July 1, 1870, to examine into the cases of offi- deemed themselves unjustly passed over by the promotions der the act of July 25, 1866, that Board stated in plain terms services of Lieutenant-Commander Glass, though fair, were not those of the three officers promoted over him, and did not re- l him for restoration to his original position.
port of the majority is based upon the recommendations and ons of the Board of admirals created under the act of February and which was authorized to inquire into the case of Comman- . Taylor and such other officers as did not have opportunity of g before the Board convened by the act of July 1, 1870, and herefore, had no authority for considering the supposed griev- Lieut. Commander Henry Glass.
ersistency with which this bill has been pressed upon the atten- ne committee should be a warning against the evils which must ily flow from the adoption of the policy proposed in the bill.

NGRESS, } SENATE. { REPORT
ssion. } { No. 671.

IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

ES, of Florida, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 538.]

*mittee on Naval Affairs, to which was referred the bill* (*S.* 538) *y into effect the recommendations of the board of admirals, conpursuant to joint resolution approved February* 5, 1879, *respectubmit the following report as the result of a careful examination e merits of the bill:*

lief given to Commander James H. Sands in the bill is that nded for him by the board of admirals, of which Rear-Admiral was president.

quently has the Senate Naval Committee made favorable and us reports indorsing the claim of Commander Sands to the re- n by this bill, which is to correct an injustice to him by promo- ongfully made over him in 1866, that a simple and brief refer- y is needed to the past action thereon.

fficer was prompt in calling attention to the injustice referred was so glaring in its character as to have demanded prompt which strangely is still withheld from him.

officers were taken from below him and passed over his head. hese, Mr. Cassell, a most gallant officer, is now dead. The two ng, and now above him, Commander Robley D. Evans, stood numbers below him, and Commander George W. Coffin stood ight numbers below him prior to their promotion in 1866, which hem many numbers above him.

ander Evans' record is that of a good, a gallant, and an efficient out, as the findings and reports of two boards of admirals show, fications and services did not justify his promotion over Com- Sands, who, moreover, participated with him in his only battle, he land assault by the Navy on Fort Fisher, where Evans was ely wounded whilst gallantly leading his men. As he lay l his classmate Sands was passing him in the charge on the hen his wounded comrade called on him for assistance. This rfully given him, Sands going out to his side in the exposed in which he lay under a heavy fire from the fort, and bound up ds, and only left his side because duty called him to renew the ith his men. And Mr. Sands afterwards performed valuable n that action, which won him the commendation of his superior

t was unjust to make promotion of Evans over Sands is mani-

What Coffin did to merit his extraordinary promotion nowhere appears; but his efficiency as an officer is recognized.

At the instance of the Secretary of the Navy, in 1869, a joint resolution was passed, and approved July 1, 1870, providing for a board to examine into and report upon all complaints of similar injustice, of which many had been made. Commander Sands having laid briefly his complaint before that board—of which Vice-Admiral Rowan was president—received its favorable recommendation. (Senate Mis. Doc. 74, second session Forty-second Congress.)

The Senate passed a bill, No. 854, giving him, with others, the relief recommended; only sixteen out of forty-four, who had presented complaints, having been favorably recommended.

Through a great error of fact, since ascertained, in certain statements made to the House of Representatives, his name was stricken from that bill; and being absent at sea on duty in the Pacific, he had no chance to correct this additional injury done to him.

He subsequently, in a memorial to Congress, called attention to this error, and by proof from the records of the Navy Department fully sustained his claim. A strong unanimous report was submitted to the Senate by its Committee on Naval Affairs (No. 282, second session Forty-fifth Congress), strongly indorsing the relief prayed; the Secretary of the Navy, Mr. Thompson, having written to the committee on March 1, 1878, to the following effect:

> I am not aware of any reason, so far as the record of Mr. Sands is concerned, why the recommendations of the board, under the joint resolution of July 1, 1870, should not have been adopted.

Pending action on that bill and report, the joint resolution of February 25, 1879, was passed and approved, and before its approval, and because of its passage, the House Committee on Naval Affairs asked Mr. Sands if he would not go before the board provided for under it. Having the utmost confidence in the justice and merit of his case, and being entitled to go before the board when it should be organized, having been absent on sea duty in the Pacific Ocean when the first board was in session, he readily consented to go before it, feeling assured of the strength of his claim. The House committee, in its report on his bill, then especially recognized his right so to appear before the board under that joint resolution. He did appear before this second board, fully and carefully laid his case befors the board, and its report is as follows:

> The board, after mature consideration of the case of Lieutenant-Commander James H. Sands, United States Navy, and examination of the records bearing thereon, find that he was unjustly passed over by the promotions made in conformity with the act of Congress, approved July 25, 1866.
>
> The board recommend the restoration of Lieutenant-Commander Sands to his original relative position on the Navy list, next below Charles McGregor.
>
> WILLIAM E. LE ROY,
> *Rear-Admiral and President.*
> STEPHEN D. TRENCHARD,
> *Rear-Admiral.*
> GEO. B. BALCH,
> *Rear-Admiral.*
>
> JAMES C. DULIN,
> *Recorder.*

This report was forwarded to Congress. In the Senate a bill, No. 1210, covering the case of Commander Sands and three others on the active list, was presented, referred to the committee, fully considered by, and received a strong, unanimous, favorable report from, the Senate

Committee (No. 651 Senate report, second session Forty-sixth
ss).
n reached in the call of the Calendar, this bill was passed on 15th
June, 1880, but, upon motion, was reconsidered, and recommitted
equest of a Senator.
mmittee it was again considered fully, and no opposition what-
s made to it, and it received again a strong favorable report;
ore final action could be had upon it the Senate adjourned finally
session, and that bill failed on that account.
tary Hunt, upon examination of the case, strongly indorsed its
and recommended that the President, by nomination, give the
oper in the case.
bill (No. 538) was presented, and was referred to the committee
ideration.
ntention of the board of admirals in its recommendation as to
nder Sands was clearly to place him in his original position
Commander Evans, who, by reason of his unjust promotion over
ds, now stands "next below" Charles McGregor on the Navy list.
ndisputable merit of the claim presented by Commander Sands
relief given by this bill is so self-evident that but one conclu-
possible, and that is here given by this committee in its cordial
nent, here added to the many heretofore made upon this claim,
bill be promptly passed, and this deserving officer find, at last,
ctory correction of this act of injustice of which he so properly
ned.

47TH CONGRESS, 1st Session. } SENATE. { REPORT 671, Part 2.

## IN THE SENATE OF THE UNITED STATES.

JUNE 21, 1882.—Ordered to be printed.

Mr. ROLLINS, from the Committee on Naval Affairs, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill S. 538.]

By an act of Congress approved July 25, 1866, Congress authorized certain promotions to be made of—

> Officers who have rendered the *most efficient* and *faithful* service during the recent war, and who possess the *highest* attainments and qualifications.

The law imposed upon the then Secretary of the Navy the delicate duty of making these promotions. It was his duty to select the officers who in his judgment had "rendered the most efficient and faithful service," and who possessed "the highest attainments and qualifications," and promote them as directed by Congress. In making his selection he advised with a number of the great admirals who had commanded the several fleets engaged in the war. Congress had, the year previous (1865), by a joint resolution, ordered—

> That any officer of the Navy, by and with the advice and consent of the Senate, may be advanced not exceeding thirty numbers in rank for having exhibited eminent and conspicuous conduct in battle, or extraordinary heroism. (13 Stats. at L., p. 424.)

Under the authority of this joint resolution and the act of July 25, 1866, the Secretary proceeded to select and nominate to the Senate the officers who, in the opinion of himself and his advisory board, had all the qualifications required by the terms of the law; and the nominations were confirmed by the Senate.

Among the officers so selected were Lieutenants (now Commanders) Douglas R. Cassell (since dead), Robley D. Evans, and George W. Coffin; and they were promoted above Commander (then Lieutenant) James H. Sands. It might be mentioned that the officers thus promoted were not applicants for promotion; they were ignorant of the action of the Secretary of the Navy until the nominations were sent to the Senate. The Secretary, with the whole record of the department before him, was supposed by Congress to be the proper judge of the relative qualifications and merits of the officers; and to him was intrusted the duty which he discharged.

Now, after a lapse of fifteen years, it is claimed by the officer named in the bill that he was "unjustly passed over" by the Secretary in making his selections for promotion and advancement under the law; and Congress is asked to determine by special legislation that he also should have been advanced by the Secretary and his advisers as properly among the officers who had exhibited "eminent and conspicuous conduct in battle, or extraordinary heroism," or who had rendered "the most effi-

cient and faithful services during the war, and possessed the highest professional attainments and qualifications."

The minority might well be content to submit the foregoing statement of the case, to show the entire absence of any justice or equity in the bill under consideration. No better evidence is needed of the wisdom of the Secretary in passing over this officer, in making his promotions under the law, than is furnished by himself in the claim now presented to the Senate. True worth is proverbially modest, and officers possessing the highest professional attainments and qualifications are not, as a rule, those who boast of their own merits.

But the minority desires to express its condemnation of the policy proposed in the bill. The present relative position of this officer has existed undisturbed since the close of the war, and it is a well-recognized fact that security of tenure of rank among officers of a military organization is essential to good discipline and efficiency, and that changes such as the bill proposes overturn such security.

It is not the complaint of the officer named in the bill that he had lost a number which he wished to regain, but that he was not advanced as others were under the act of 1866.

In conformity with the resolution approved July 1, 1870, the Secretary of the Navy issued the following circular letter to the officers of the Navy, viz:

NAVY DEPARTMENT,
*Washington, January 24, 1871.*

A Board of officers has been organized, under an act of Congress approved July 1, 1870, for the purpose of examining into the cases of such officers as may deem themselves unjustly passed over by promotions made in conformity with the act of Congress approved July 25, 1866. The Board will meet at the Navy Department on the 1st proximo, and all officers concerned are hereby notified to present their claims for consideration by the Board, either in person or in writing addressed to Vice-Admiral S. C. Rowan, president of the Board, at the Navy Department, as soon as practicable.

GEO. M. ROBESON,
*Secretary of the Navy.*

The receipt of the circular letter was acknowledged by Commander James H. Sands February 23, 1871.

This Board reported as follows, viz:

The Board, after a careful examination of all the papers submitted by Lieut. Commander James H. Sands, and a copy of his record taken from the files of the Navy Department, all of which are hereunto attached, find that he participated with the storming party at Fort Fisher, and rendered equal service with the three officers of his date who were promoted over him. But, in the opinion of the Board, these officers were advanced much beyond the merits of the service rendered, one of them being advanced twenty-two numbers, another twenty-five, and the other thirty-eight numbers. The Board recommend that Lieutenant-Commander Sands be advanced ten numbers in his grade for gallant service.

This Board did not recommend that Lieutenant-Commander Sands should be restored to his "original position," but were of the opinion that he had rendered equal service with the three officers who had been promoted over him, although these latter officers had been advanced much beyond the merits of the services rendered, and recommended that he should be advanced ten numbers.

That this latter recommendation was clearly unlawful, and beyond the province of the Board, is clearly set forth in the letter of the Secretary of the Navy, dated March 1, 1878, written in response to inquiries made by the Naval Committee of the Senate, and which says:

The Rowan Board (1870) was apparently to hear and consider the complaint of officers who felt themselves "unjustly passed over." The instructions to this Board do not show that their duties comprehended more than for the restoration to original position, or that they should recommend advancement beyond that position.

Congress refused to sanction this recommendation. It seems, however, that demands of this nature never die. Political and personal influence are drummed up, and bill after bill, and resolution after resolution find their way into Congress, presenting the same supposed grievance year after year.

Congress, acting under just such pressure, passed the joint resolution of February 5, 1879, authorizing a further examination into the cases of such officers "as may deem themselves unjustly passed over"; but an effort was studiously made in the joint resolution to guard against the possibility of reopening cases of officers who had already appeared before the previous Board. The resolution of 1879 says, in plain terms, that the Board shall examine into the cases of such officers only—

As did not have an opportunity, from any cause whatever, to appear before the Board created by virtue of the joint resolution of July 1, 1870.

Congress aimed to limit the jurisdiction of the Board of 1879, so as to exclude not only all officers who had appeared before the Board of 1870, but all officers who had had an "opportunity" to appear, whether they availed themselves of it or not. Nevertheless, the Board of 1879, without the slightest authority in law, took jurisdiction of this case, and recommended that Commander J. H. Sands be restored to his "original relative position on the Navy list next below Charles McGregor."

But Commander Sands's relative position on the Navy list was *never* next below Charles McGregor. Prior to the advancement made in conformity with law, Commander Sands occupied (and still occupies) a position on the Navy list next below Commander A. G. Kellogg—seven officers of good standing intervening between him and Commander McGregor.

While the officer named in the bill complains of having been "unjustly passed over," he asks that he too may be passed over the heads of seven of his brother officers, who, it is tacitly admitted, did equally good service, and are equally meritorious, in order that he may hold the same relative position to the three other officers who were, in the opinion of the board of admirals, advanced "much beyond the merits of the services rendered."

He asks Congress to remedy his grievance by inflicting greater injustice on other officers.

It is evident to the minority that if this game of "leap-frog" among the officers be once sanctioned by Congress there can be no end to it, as each officer in turn will present his grievance, and that grievance be manifested every time he is jumped by others.

The report of the majority is based upon the recommendations and conclusions of the boards of admirals convened under the acts of 1870 and 1879, which had no authority for advancing Commander Sands over the heads of his brother officers.

The persistence with which this bill has been pressed upon the attention of the committee should warn us against the evils which must necessarily flow from the adoption of the policy proposed in the bill.

We now have pressed upon the attention of Congress the illegal and unauthorized action of boards of officers, in order to influence legislation, and should the bill become a law we may expect that, at the next session of the present Congress, the Naval Committee will be called upon to consider numerous bills introduced by the friends of the seven commanders over whom Commander Sands shall have been unjustly advanced.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 672.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. JONES, of Florida, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 539.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 539) to carry into effect the recommendations of the board of admirals, convened pursuant to the joint resolution of February 5, 1879, in the case of Lieut. Commander Charles D. Sigsbee, respectfully submit the following report:*

Your committee have carefully considered the merits of the claim upon which this bill rests. It only differs from the case of Commander Sands in the fact that but *one* officer, Commander George D. Coffin, was taken from *seven* numbers *below* Lieutenant-Commander Sigsbee, and, under the act of July 25, 1866, promoted *thirtg-four* numbers above him.

The great injustice in this lies in the fact that Commander Sigsbee had seen far greater war service than Commander Coffin, the latter having only been in the engagement at Fort Fisher, where he was slightly wounded, whereas Mr. Sigsbee participated in the battle in Mobile Bay, under Farragut, and also in the assault by the sailors on Fort Fisher; and his record for gallantry in both actions is excellent.

That his professional qualifications are fully up to the standard fixed by the act of July 25, 1866, is evident from the fact that Commander Sigsbee's name is known to the scientific world in connection with his deep-sea soundings and surveys as that of an officer whose ability is a great credit to the United States Navy. He and Commander Sands were the only officers of their class whose complaints were adjudged to be well made by the Rowan board in 1871.

His name with that of Mr. Sands was omitted from Senate bill No. 854, when it passed the House to carry out the recommendations of that board. This omission, as this committee has reported in the case of Commander Sands, was the result of an *error*, afterwards made manifest from the records, but which deprived them of the relief they should *then* have received.

The House Committee on Naval Affairs, suggested that he also should with Mr. Sands go before the board of admirals provided for under the joint resolution approved February 5, 1879, instead of asking special legislation to correct the error referred to.

Commander Sigsbee *did* appear before that board and asked a careful

scrutiny of his record and of his complaint, and received its favorable recommendation in these words, to wit:

The board, after mature consideration of the case of Lieut. Commander Charles D. Sigsbee, United States Navy, and examination of the records bearing thereon, find that he was unjustly passed over by the promotions made in conformity with the act of Congress approved July 25, 1866.

The board recommend the restoration of Lieutenant-Commander Sigsbee to his original relative position on the Navy list next below Robley D. Evans.

WM. E. LEROY,
*Rear-Admiral and President.*
STEPHEN D. TRENCHARD,
*Rear-Admiral.*
GEO. B. BALCH,
*Rear-Admiral.*

JAMES C. DULIN, *Recorder.*

This being forwarded to Congress, Commander Sigsbee has sought to obtain the relief recommended by the board, but has been delayed therein by the same obstructions that operated in the case of his brother officer, Commander Sands.

The committee, seeing that the object of the board was to place Mr. Sigsbee in his original place *relative* to Commander Coffin, who was *unjustly* promoted over him, recommending that he be restored to his place above that officer, who now stands "next below Robley D. Evans," think this proper.

The careful examinations of and scrutiny into the record of Commander Sigsbee by the two boards of admirals and by the committees of the Senate, when considering the recommendations of the boards, all resulting in reports favorable to his claim and establishing the fact that injustice was done him in the regard complained of by him, convince this committee that simple justice demands the granting of the relief sought, and they recommend that the bill be passed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT 672, PART 2.

IN THE SENATE OF THE UNITED STATES.

JUNE 21, 1882.—Ordered to be printed.

Mr. ROLLINS, from the Committee on Naval Affairs, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill S. 539.]

By an act of Congress approved July 25, 1866, Congress authorized certain promotions to be made of "officers who have rendered the most efficient and faithful service during the recent war, and who possess the highest attainments and qualifications."

The law imposed upon the then Secretary of the Navy the delicate duty of making these promotions. It was his duty to select the officers who in his judgment "had rendered the most efficient and faithful service," "and who possessed the highest attainments and qualifications," and promote them as directed by Congress. In making his selection he advised with a number of the great admirals who had commanded the several fleets engaged in the war. Congress had, the year previous (1865), by a joint resolution ordered—

> That any officer of the Navy, by and with the advice and consent of the Senate, may be advanced not exceeding thirty numbers in rank, for having exhibited eminent and conspicuous conduct in battle, or extraordinary heroism (13 Stat. at L., p. 424).

Under the authority of this joint resolution and the act of July 25, 1866, the Secretary proceeded to select and nominate to the Senate the officers who, in the opinion of himself and his advisory board, had all the qualifications required by the terms of the law, and the nominations were confirmed by the Senate.

Among the officers so selected was Lieut. (now Commander) George W. Coffin, and he was promoted above Commander (then Lieutenant) Charles D. Sigsbee.

It might be mentioned that the officers thus promoted were not applicants for promotion. They were ignorant of the action of the Secretary of the Navy until the nominations were sent to the Senate. The Secretary, with the whole record of the department before him, was supposed by Congress to be the proper judge of the relative qualifications and merits of the officers, and to him was intrusted the duty which he discharged.

Now, after a lapse of fifteen years, it is claimed by the officer named in the bill that he was "unjustly passed over" by the Secretary in making his selections for promotion and advancement under the law, and Congress is asked to determine by special legislation that he also should have been advanced by the Secretary and his advisers as properly among the officers who had exhibited "eminent and conspicuous conduct in battle, or extraordinary heroism," or who had rendered "the

most efficient and faithful services during the recent war, and possessed the highest professional attainments and qualifications."

The minority might well be content to submit the foregoing statement of the case, to show the entire absence of any justice or equity in the bill under consideration. No better evidence is needed of the wisdom of the Secretary in passing over this officer in making his promotions under the law than is furnished by himself in the claim now presented to the Senate. True worth is proverbially modest, and officers possessing the highest professional attainments and qualifications are not, as a rule, those who boast of their own merits.

But the minority desires to express its condemnation of the policy proposed in the bill. The present relative position of the officer has existed undisturbed since the close of the war, and it is a well-recognized fact that security of tenure of rank among officers of a military organization is essential to good discipline and efficiency, and that changes such as the bill proposes overturn such security.

It is not the complaint of the officer named in the bill that he had lost a number which he wished to regain, but that he was not advanced as others were under the act of 1866.

In conformity with the resolution approved July 1, 1870, the Secretary of the Navy issued the following circular letter to the officers of the Navy, viz:

NAVY DEPARTMENT.
*Washington, January 24, 1871.*

A Board of officers has been organized under an act of Congress approved July 1, 1870, for the purpose of examining into the cases of such officers as may deem themselves unjustly passed over by promotions, made in conformity with the act of Congress approved July 25, 1866. The Board will meet at the Navy Department on the 1st proximo, and all officers concerned are hereby notified to present their claims for consideration by the Board, either in person or in writing, addressed to Vice-Admiral S. C. Rowan, president of the Board, at the Navy Department, as soon as practicable.

GEO. M. ROBESON,
*Secretary of the Navy.*

The receipt of the circular letter was acknowledged by Commander C. D. Sigsbee, April 1, 1871.

This Board reported as follows:

The Board, after a careful examination of all the papers submitted by Lieut. Commander C. D. Sigsbee, and a copy of his record taken from the files of the department, all of which are hereunto attached, find that he participated with the storming party at Fort Fisher, and rendered equal service with the officer who was promoted over him by selection under the act approved July 25, 1866. But, in the opinion of the Board, that officer was advanced much beyond the merit of the service rendered.

The Board recommend that Lieutenant-Commander Sigsbee be advanced ten numbers in his grade for gallant service.

This Board did not recommend that Lieutenant-Commander Sigsbee should be restored to his "original position," but were of the opinion that he had rendered equal service with the officer who had been promoted over him, although this latter officer had been advanced much beyond the merits of the service rendered; and recommended that he should be advanced ten numbers.

That this latter recommendation was clearly unlawful, and beyond the province of the Board, is clearly set forth in the letter of the Secretary of the Navy, dated March 1, 1878, written in response to inquiries made by the Naval Committee of the Senate, and which says:

The Rowan Board (1870) was apparently to hear and consider the complaints of officers who felt themselves "unjustly passed over." The instructions to this Board do not show that their duties comprehended more than for the restoration to original position, or that they should recommend advancement beyond that position.

Congress refused to sanction this recommendation. It seems, however, that demands of this nature never die. Political and personal influence are drummed up, and bill after bill, and resolution after resolution, find their way into Congress, presenting the same supposed grievance year after year.

Congress, acting under just such pressure, passed the joint resolution of February 5, 1879, authorizing a further examination into the cases of such officers "as may deem themselves unjustly passed over"; but an effort was studiously made in the joint resolution to guard against the possibility of reopening cases of officers who had already appeared before the previous Board. The resolution of 1879 says, in plain terms, that the Board shall examine into the cases of such officers only "as did not have an opportunity, from any cause whatever, to appear before the Board created by virtue of the joint resolution of July 1, 1870." Congress aimed to limit the jurisdiction of the Board of 1879, so as to exclude not only all officers who had appeared before the Board of 1870, but all officers who had had an "opportunity" to appear, whether they availed themselves of it or not. Nevertheless, the Board of 1879, without the slightest authority in law, took jurisdiction of this case, and recommended that Commander Charles D. Sigsbee be restored to his "original relative position on the Navy list, next below Robley D. Evans."

But Commander Sigsbee's relative position on the Navy list was *never* next below Robley D. Evans. Prior to the advancements made in conformity with law, Commander Sigsbee occupied (and still occupies) a position on the Navy list next below Commander Francis Morris; twenty-three officers of good standing intervening between him and Commander Evans.

While the officer named in the bill complains of having been "unjustly passed over," he asks that he too may be passed over the heads of twenty-three of his brother officers, who, it is tacitly admitted, did equally good service and are equally meritorious, in order that he may hold the same relative position to one other officer, who was, in the opinion of the Board of admirals, advanced "much beyond the merits of the services rendered."

He asks Congress to remedy his grievance by inflicting greater injustice on other officers.

It is evident to the minority that if this game of "leap-frog" among the officers be once sanctioned by Congress, there can be no end to it; as each officer in turn will present his grievance, and that grievance be manifested every time he is jumped by others.

The report of the majority is based upon the recommendations and conclusions of the boards of admirals convened under the acts of 1870 and 1879, which had no authority for recommending the advancement of Commander Sigsbee over the heads of his brother officers.

The persistence with which this bill has been pressed upon the attention of the committee should warn us against the evils which must necessarily flow from the adoption of the policy proposed in the bill.

We now have pressed upon the attention of Congress the illegal and unauthorized action of boards of officers in order to influence legislation; and should the bill become a law, we may expect that at the next session of the present Congress the Naval Committee will be called upon to consider numerous bills introduced by the friends of the twenty-three commanders over whom Commander Sigsbee shall have been unjustly advanced.

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 673.

# IN THE SENATE OF THE UNITED STATES.

MAY 31, 1882.—Ordered to be printed.

Mr. BAYARD, from the Committee on Finance, submitted the following

# REPORT:

[To accompany bill S.1837.]

*The Committee on Finance, to whom was referred the bill (S. 1837) for the relief of Clark Hayner and his sureties, submit the following report:*

Clark Hayner, having a distillery at Waco, in Texas, was duly assessed for taxes on the deficiency of his production, estimated, upon the registered capacity of his distillery, as follows:

| | |
|---|---|
| For December, 1877 | $95 16 |
| For February, 1878 | 189 49 |
| For March, 1878 | 597 24 |
| For November, 1880 | 191 80 |
| For December, 1880 | 806 75 |

The letter of the Commissioner of Internal Revenue of May 23, 1882, printed below, shows that Mr. Hayner did not deny the formal and legal regularity of these assessments, but alleged their hardship on two grounds: First, that in fact he had paid tax on all the distilled spirits he had actually produced; second, that the inferior quality of the grain and water used accounted for his diminished production.

The letter of Mr. Ludlow, collector of internal revenue for the third district of Texas, says he is "perfectly convinced that the government has not lost a dollar of tax on spirits actually produced" by Mr. Hayner, and your committee admit the apparent hardship of collecting taxes on distilled spirits not in fact produced; but it is obvious that, under the system of taxation now in force, assessment upon the registered capacity of a still is essential to prevent fraud. As this was and is a feature of the general law applicable to all distillers, and in view and full knowledge of which Mr. Hayner commenced and continued the business, your committee do not recommend that he should be especially exempted from its operations, or that the law itself should be amended in this particular.

As to the claim that inferior grain and water were used, if this were voluntary on the part of Mr. Hayner, there was and is no provision of law providing for discrimination on that account. If the use of such inferior material was involuntary, and can be shown to be in the category of "unavoidable accident," ample power already is vested by existing law in the Treasury Department to grant relief.

Your committee therefore report the bill back adversely, and recommend that it be indefinitely postponed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
*Washington, D. C., May 25, 1882.*

SIR: I have the honor to inclose herewith a letter from the Commissioner of Internal Revenue, dated the 23d instant, giving the information called for in your letter of the 16th instant, in relation to Senate bill 1837, for the relief of Clark Hayner and his sureties.

It will be seen that the assessments made against Hayner as a distiller were strictly in accordance with law, and that there is no ground for relief in his case which would not be equally good in thousands of other cases. If relief is to be given in one case, a general law should be passed covering all cases of the same kind.

Very respectfully,

CHAS. J. FOLGER,
*Secretary.*

Hon. JUSTIN S. MORRILL,
*Chairman of Committee on Finance, United States Senate.*

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TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE.
*Washington, May 23, 1882.*

SIR: I am in receipt of the letter of Hon. J. S. Morrill, United States Senator, dated the 16th instant, inclosing a copy of Senate bill No. 1837, for the relief of Clark Hayner, which letter bears the indorsement of Hon. H. F. French, Assistant Secretary, referring the papers to me for a report of the facts in the case and my views of the justice of the claim.

In reply, I have the honor to report that Clark Hayner, a distiller in the third district of Texas, was assessed the following taxes on deficiencies in the production of distilled spirits:

| | |
|---|---|
| For December, 1877 | $95 16 |
| For February, 1878 | 189 49 |
| For March, 1878 | 597 24 |
| For November, 1880 | 191 80 |
| For December, 1880 | 806 75 |

Claims for the abatement of the taxes assessed for December, 1877, and February and March, 1878, were presented to this office in July, 1879. Mr. Hayner admitted in the claims that the assessments were in accordance with the law, but claimed relief on the ground that his operations were in the nature of an experiment, and having, as he said, used due diligence and paid the tax on all spirits produced, he urged that he should not be required to pay these assessments. The claims were examined and rejected by this office, no error appearing in the assessments.

The claim for the abatement of the assessments for November and December, 1880, was received during the present month, and is not in condition for final action. Relief is claimed on account of the poor quality of the grain and water used in the production of spirits, and on account of unavoidable accidents.

No relief can be afforded by this office on the ground that the grain and water were of inferior quality unless the inferior quality was the result of an unavoidable accident, which appears not to have been the fact in this case.

In a former report, dated January 18, 1881, to your predecessor, on a bill to relieve Hayner from the payment of the first three assessments covered by the inclosed bill, I said: "Claims of this class are very numerous, and have been arising during the past twelve years. If taxes were to be made legally abatable on such grounds, I see no reason why they should not also be refundable. A general act of relief for that purpose would, in my opinion, remove the bar raised by the statutes of limitation, unless so framed as to shut out claims now barred. The claims for refunding which would come in under such an act would doubtless number hundreds, if not thousands."

I do not regard these claims of Hayner as just claims so far as they rest upon the inferiority of the materials or the water used. That is to say, other distillers have been required to pay deficiency taxes accruing under like circumstances, and justice would demand that the requirements of the statute should be enforced with uniformity in similar cases.

The letter of Senator Morrill, with the inclosures, is returned herewith.

Very respectfully,

GREEN B. RAUM,
*Commissioner.*

Hon. CHAS. J. FOLGER,
*Secretary of the Treasury.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 674.

# IN THE SENATE OF THE UNITED STATES.

JUNE 1, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on Patents, submitted the following

# REPORT:

[To accompany bill S. 1947.]

*The Committee on Patents, to whom was referred the petition of Emily W. Taylor, asking for an extension of certain letters patent reissued April* 18, 1876, *and numbered* 7061 *and* 7067, *have considered the same, and respectfully report:*

Isaac Winslow, of whom the petitioner is the daughter and sole heir, received in 1862 two patents for packing green corn, one for the process of preparing corn for packing, and the other for the product.

These inventions were of great practical value. Owing to persistent infringements, and the necessity of constant and expensive litigation, neither Winslow nor the person to whom he assigned his right ever received any compensation whatever, but on the contrary were put to large expense in attempting to vindicate their rights.

In October, 1875, the Supreme Court of the United States, in Sewell *vs.* Jones (1 Otto, 171), against the very earnest dissent of Mr. Justice Clifford, who heard the cause in the circuit court, held the patents were invalid for want of novelty. This decision is put solely on the ground that the patent does not describe and claim what constitutes the real invention of the patentee. Thereupon, in 1876, the original patents having but three years to run, the patentee obtained reissues, the Commissioner of Patents, on full hearing, being of opinion that the decision of the Supreme Court went to the extent only that the matter introduced by amendment was not set forth in the patents.

After the granting of the reissues a new suit was instituted against one McMurray. (See Jones *vs.* McMurray, 13 Patent Of. Gaz., 6.) In this suit Judge Bond held that the decision in 1 Otto went to the extent of holding that petitioner's invention was not novel. From this decision an appeal has been taken to the Supreme Court of the United States, which is not likely to be determined before 1883 or 1884. If the court shall hold that the invention lacks novelty, the extension will be without effect. If, on the other hand, it shall adopt the view of Judge Clifford and the Commissioner of Patents, then it seems clear that the representative of the inventor ought to enjoy the benefit of his invention for a reasonable time. The defect in the original letters patent can hardly be imputed as gross laches or carelessness to an inventor who, of course, was compelled to resort to the aid of an expert in making his specifications, and who did all that so distinguished a jurist and patent lawyer as Mr. Justice Clifford deemed to be necessary.

We therefore recommend the passage of the accompanying bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 675.

# IN THE SENATE OF THE UNITED STATES.

JUNE 1, 1882.—Ordered to be printed.

Mr. MAXEY, from the Committee on Post-Offices and Post-Roads, submitted the following

# REPORT:

[To accompany bill S. 1775.]

*The Committee on Post-Offices and Post-Roads, to which was referred the bill (S. 1775) for the relief of John G. Abercrombie, of Benton County, Arkansas, respectfully submit the following report:*

Mr. Abercrombie, under the advertisement of November 1, 1878, bid off post route No. 28584, from Pineville, Mo., to Sulphur Springs, Ark., at $51.75.

He was required to file bond prior to June 1, 1879. The bond, &c., did not reach him till after that date. The bond was promptly, upon receipt, filled and returned.

In the mean time he had been declared a defaulting contractor, and he was required to pay the damages assessed in the bond, $110, which he did pay on the 31st March, 1880, as fully appears by the letter of the Sixth Auditor, dated April 19, 1880.

It further appears by the letter of the Sixth Auditor of May 18, 1880, that had Mr. Abercrombie's affidavit accounting for the delay in receiving bond been received before the draft on him was paid, the fine would have been remitted.

In view of the facts the committee report the bill back, and recommend that it do pass, amended as follows: In line 8 strike out "one" and insert "eight," to correspond with the facts.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 677.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2104.]

The Committee on Pensions, to whom was referred the bill (H. R. 2104) granting a pension to Mrs. Electa L. Baldwin, have had the same under consideration, and report the same back to the Senate with a recommendation that it be passed. The facts in this case are very fully and accurately set out in the report of the House Committee on Invalid Pensions, and is adopted by your committee as their own, which report is as follows:

From the papers before this committee, it appears that Electa L. Baldwin is the legal widow of Charles Baldwin, who was a private in Company B, Seventh Pennsylvania Cavalry. Baldwin, as shown by the record of the War Department, enlisted September 21, 1861, performed active military duty until July 13, 1862, when taken prisoner in action at Murfreesboro, Tenn. He reported at Camp Parole, Maryland, in September, 1862, was forwarded to Cincinnati, Ohio, and on the 21st of November, 1862, admitted to general hospital at Covington, Ky., with distortion of spine, from which hospital he was discharged the service December 15, 1862, on surgeon's certificate of disability, setting forth as disabling cause angular curvature of the dorsal spine, which disease, in the opinion of the surgeon, existed before enlistment in a latent condition. The soldier died September 24, 1865, according to the certificate of the attending physician, of pelvic abscess and tumor on back.

The widow's claim for pension has been rejected by the Pension Office on the ground that the soldier died of disease which originated prior to entering the service. This action seems to have been based simply upon the opinion expressed by the surgeon in the certificate of disability, to the effect that the curvature of the spine existed in a latent condition before enlistment.

There is, in the opinion of this committee, ample proof of the soldier's soundness at the time of his enlistment. Neighbors and fellow-soldiers testify that Baldwin was a very stout, healthy man before his enlistment, and particularly free from any disease of the spine. The cause of the disease is not shown as clearly as it probably could be shown by the claimant, had the Pension Office permitted her to overcome the adverse record. She alleges that it was due to a fall from his horse, and a sergeant of the company testifies that the soldier, a few weeks prior to his discharge, was taken with severe pains in back, which resulted in the disability for which he was discharged, and finally caused his death. It also appears in evidence that shortly after discharge soldier's condition became worse. A tumor weighing nearly a pound was cut from the spine about five months after his return from the Army. He was unable to perform any labor, and suffered greatly until relieved by death on September 24, 1865.

It is evident from the opinion of the medical referee of the Pension Office, on file with the papers, that could it be clearly shown that the soldier was sound at enlistment, that the origin of the fatal disease in service would have to be conceded.

The sworn statements of persons having personal knowledge of the soldier's condition before enlistment, whose credibility is properly established, are, in the opinion of this committee, entitled to more consideration than the statement of a surgeon of a general hospital, who from the very nature of the circumstances could not have had any knowledge of the soldier prior to his admission to the hospital, and therefore is inclined to give the claimant the benefits of doubt, which necessarily must surround the origin of a disease of an obscure character, by reporting favorably on the bill and asking that it do pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 678.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4082.]

*The Committee on Pensions, to whom was referred the bill (H. R. 4082) granting a pension to Ellen Gillespie, have had the same under consideration, and report:*

That this case was examined by the Committee on Pensions of the Senate during the Forty-sixth Congress, and an adverse report made thereon. The application of Ellen Gillespie, widow of John W. Gillespie, was rejected by the Pension Office on the ground that "the cause of the soldier's death was not due to his military service." The soldier died suddenly in the presence of his family physician, July 9, 1878.

B. Devereaux, his attending physician, testifies substantially as follows:

Soldier's wound was gunshot, passing through the humerus of right arm, then entering the thorax passing downwards through lower lobe of right lung, through the diaphragm, then through or in contact with the *lobus major*, emerging close to or within about an inch of the same (a little above the right kidney), the course of the ball being downward from point of entrance to the place of exit. External parts of wounds quite marked, especially at point of exit; quite an indentation at place of cicatrix. For several years his symptoms were pain under the ribs of the right side, deep seated as under or on the liver, described as severe darting or shooting pains; no tenderness upon pressure, not fainting as in abscesses. The pains increased in severity each year; attacks became more frequent, pain more intolerable about a year before death. Secretions, digestion, and action of heart continued normal. Dissolution occurred suddenly in presence of affiant. Appeared as usual, suffering much pain in region described. No acceleration of pulse or respiration. Upon assuming a sitting posture suddenly expired. Affiant had been his family physician for eleven years, and believes he had no other disease; that the wound, or injury resulting from the wound, was, if not the immediate, the remote cause of his death.

June 10, 1870, D. W. Evans, examining surgeon, certifies to ball passing through biceps and rheumatic condition of that muscle.

September 8, 1873, same surgeon certifies to the continued rheumatic condition of soldier's muscle as before.

May 9, 1874, same surgeon certifies to increased disability on account of rheumatic condition of arm; also, to the biceps being very much weakened, and muscles of the arm generally flabby and somewhat atrophied.

June 10, 1878, G. W. Smith, examining surgeon, certifies to gunshot wound by ball entering at inferior angle of scapula and emerging in a line

to right side, four inches from point of entrance; did not penetrate chest; no apparent structural change; may be some functional disa bility.

The soldier in his application for an increase of pension, filed April 18, 1878, alleges—

> Wound in right arm and side, ball passing around between fourth and fifth ribs, and emerging within an inch of backbone. Greatly troubled with pain in breast, side, and from shoulder to finger tips.

D. W. Evans, examining surgeon, under date of February 6, 1863, certifies:

> Ball passed through biceps muscle of right arm, about the center, on account of which the biceps has been considerably weakened; there is also a rheumatic condition of this muscle, which is more especially felt at its origin and insertion, which I have no doubt is attributable to the wound.

The wound itself was received at the battle of Antietam, September 17, 1862, of which there is ample proof.

Your committee are of opinion that the weight of evidence largely preponderates in favor of the view that the disease of which Gillespie died had its origin in the wounds received on the battle-field of Antietam. The rheumatic condition made its appearance within a very brief period after the wounding, and steadily increased year after year until sudden death brought relief to the sufferer. Therefore your committee recommend the passage of the bill.

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ONGRESS, } SENATE. { REPORT
Session. } { No. 679.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

ATER, from the Committee on Pensions, submitted the following

# REPORT:

*mmittee on Pensions, to whom was referred the petition of Salome H. in, praying to be placed on the pension-rolls, have had the same under ideration, and report:*

t petitioner is the widow of David Seguin, a private of Company teenth Iowa Volunteers, who enlisted September 10, 1861, and ischarged June 19, 1865, at Pocotaglia, S. C. Died at Memphis, , July 24, 1865, of typho-malarial fever.

the time of the soldier's discharge he was on detached duty at his, Tenn., was in the civil service of the United States, and had n such service for six months next preceding the same. Dr. H. od, late a surgeon in the Army, is clear as to his disease, which e says, "Typho-malarial fever of a malignant type accompanied aundice. The immediate cause of death was nervous exhaustion ht about by the intensity of malarial poisoning."

T. B. Hood, to whom the case was referred in the Pension Office, n his brief:

> o-malarial fever is classed among the "acute infectious diseases," and con- tly is *specific* in character. Its origin in *any* case must be referred to the time ck.

s seems to your committee to be conclusive of this case against easonable inference that the disease of which Seguin died had its tion in the service, and therefore your committee recommend that ayer of the petition be not granted.

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H CONGRESS, } SENATE. { REPORT
st Session. } { No. 680.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2635.]

*e Committee on Pensions, to whom was referred the bill (H. R. 2635) granting an increase of pension to Henry Gunn, have had the same under consideration, and submit the following report:*

Gunn received a gun-shot wound on the 17th of September, 1872, at ıtietam, Md., in line of duty, for which he was pensioned at $6 pet nth. He filed his application for an increase of pension December 9, 9, which was rejected by the Pension Office upon the ground thar pensioner was not entitled to a higher rate of pension. The House l gives him an increase to $10 per month.

alvin C. Halsey, examining surgeon, testifies under date of April 10, 2, as follows:

ounded at Antietam September 17, 1872; ball entered left leg in front at middle mur, injuring that bone, several pieces of which have been discharged and made on inside of the thigh. Some muscular contraction about cicatrices. Nerves of were injured, causing numbness. Applicant constantly lame and unable to be on feet any great length of time for manual labor or walking. Habits good, and case appears meritorious.

ame surgeon, under date of July 30, 1878, certifies as follows; after ing character, time, and place of wound, he says:

nstant lameness and inability to be on feet any length of time for manual labor alking. In hot weather breaks out in sores between middle of femur and knee. ease is based on the ground that there is increased pain and lameness from what e was when examined six years ago last April. There is no structural change to , except leg is a little smaller than the opposite. There is muscular contraction at the cicatrices, and tenderness. Adhesion interferes with motion. He recomded $8 per month.

ame surgeon, under date of December 29, 1879, after giving char-er, time, and place of wounding, certifies:

nstant lameness and inability to be on feet any length of time for manual labor alking. Increase is claimed on the ground that there is an increase of muscular phy and numbness along the lower half of the femur. No structural change since ious examination, except atrophy. Claimant alleges that he has suffered very h more pain and lameness than formerly. Recommends increase to $9.

our committee are of opinion that the evidence would warrant an ease of claimant's pension to $8 per month, but the examination of s class of cases is so peculiarly within the province of the Pension ce, under existing laws, that your committee think it unwise to inere by special act, unless special circumstances raise equities which technical construction of the statutes would not permit to be consid-d, and there are no such special circumstances or equities in this e, and therefore your committee recommend that the bill do not ss.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 681.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1822.]

*The Committee on Pensions, to whom was referred the bill (S. 1822) granting an increase of pension to George E. Wilder, have considered the same, and report:*

That Wilder was pensioned on account of wounds in left hand, rendering it nearly useless for the performance of manual labor. Wound received at Spottsylvania, May 19, 1864. Pensioned June 7, 1865, at $3 per month; increased February 17, 1875, to $8 per month; and further increased to $12 September 23, 1881.

Certificate of surgeon September 23, 1881, says:

Applicant lost his right hand by accident, and disability of left hand becomes more acute by reason of it. Cannot use left hand but to small extent compared with a sound hand; disables applicant to an extent almost equal to loss of hand at wrist. I find his disability to be twelve-eighteenths of total third grade.

He was accordingly granted an increase to $12 per month.

The right hand was lost in firing a salute on July 4, 1874.

The bill proposes to increase his pension to $20 per month.

Your committee find nothing in the case to warrant such an increase. Misfortune or accident, in the opinion of your committee, should never be accepted as a ground for granting a pension or for an increase when granted. Therefore your committee recommend that the bill be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 682.

IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of John Spaulding, praying an increase of pension, have had the same under consideration, and report:*

That Spaulding was captain of Company G, Fifteenth Regiment Kentucky Infantry Volunteers; that during his service he contracted varicose viens and an ulcerous condition of his right leg; that since the close of the war he has been granted a pension, certificate 139,270, at $15 per month; that in 1869, while serving on the police force in New Orleans, La., he received a gun-shot wound in the right leg, and thereafter the same was amputated. It appears from the affidavit of the physician who attended him for said gun-shot wound that—

> The ball entered the upper third of the right leg, shattering both bones. The case being a very serious one on account of the nature of wound and delicate condition of patient he called in consultation Drs. Freedian and Forments, who continued to see claimant daily, with affiant, until his partial recovery. He had on the lower portion of same leg a large and ugly varicose ulcer, which seemed to be of long standing. After a period of about 15 days from date of injury gangrene set in and they were compelled to amputate above the knee.

This physician also testifies that the varicose and ulcerated condition of patient's leg, in his opinion, contributed a great deal to excite subsequent gangrene and amputation.

Upon these facts and statements petitioner applied for an increase of pension, which was decided against him. He thereupon applied to the Secretary of the Interior, who sustained the decision of the Commissioner of Pensions. He now presents his petition to Congress.

Your committee, after a careful consideration of all the facts, see no reason for disturbing the decision, but fully concur in its correctness, and therefore recommend that the prayer of the petitioner be not granted.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 683.

IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1468.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1468) granting a pension to William R. Perdue, having examined the same, make the following report:*

That said Perdue enlisted August 21, 1862, as a private in Company F, One Hundred and Fifteenth Regiment Ohio Volunteers, for the term of three years or during the civil war. He was discharged June 22, 1865, when his company was mustered out of service at Murfreesborough, Tenn. On the 20th June, 1879, he filed an application for invalid pension, alleging, as the basis of his claim, that—

At Minerva, Ohio, on or about the 26th September, 1863, he was attacked by a mob of men unfriendly to the government, forced to the ground, was kicked, beat, and trampled across the kidneys, causing permanent weakness and great distress; was kicked in the left thigh, causing laceration of the muscles of the thigh, causing constriction, impairing circulation of blood, injuring sciatic nerve, causing great pain in entire limb, and at times partial paralysis and permanent lameness.

He further states that he never received any medical treatment at the time for his injuries. He was on furlough at the time of receiving the injuries complained of, and at the expiration of said furlough, on or about the 20th October, 1863, he rejoined his command and continued in the service until date of discharge, and during said period it does not appear that he was at any time on the sick or disabled list or in hospital.

After a very full investigation of the claim, it was rejected in January, 1881, on the ground that the alleged injuries were not received in the line of duty. The claimant then appealed to Congress for special relief, and on the 31st January, 1882, the House Committee on Pensions made the following adverse report:

This claim has had a thorough investigation in the Pension Office. The Commissioner says:

"The claim was rejected on the 4th of January, 1881, on the ground that the soldier was not in the line of duty when the alleged injuries were received, he being at the time on furlough, which was neither a sick nor a veteran furlough. See 4700 Revised Statutes governing this office in such cases as follows:

"'Officers absent on sick leave and enlisted men absent on sick furlough or veteran furlough with the organization to which they belong, shall be regarded in the administration of the pension law in the same manner as if they were in the field or hospital.'"

From voluminous testimony on file in this case the following appears as proven:

That claimant received a furlough on the 23d or 24th September, 1863; was at his home in Minerva, Ohio, on the 26th of September, 1863. Francis M. Wareham, first sergeant of Company I, First Ohio Volunteer Infantry, was on duty at Minerva, Ohio, on that day, as recruiting officer, and during the progress of a Valandigham meeting

was attacked by a mob of roughs or Copperheads unfriendly to the government. Claimant, dressed in soldier clothes, seeing the officer in danger, went to the rescue of said Wareham at his instance and request, whereupon he, the claimant, William R. Perdue, was also attacked, forced to the ground, kicked and tramped upon, receiving injuries from which he has since continuously suffered. Medical evidence and recent examinations clearly show present total disability of soldier from said injuries.

In this case the committee report adversely.

The bill was afterwards recommitted, and the House committee subsequently (in April, 1882) made a second report thereon, as follows:

The Committee on Invalid Pensions, to which was re-referred the bill (H. R. 1468) granting a pension to William R. Perdue, has examined and considered new and important evidence recently presented, from which it is evident that the former action of this committee should be reversed, and therefore reports favorably on said bill, and asks that it do pass as amended.

The only new or additional evidence found in the papers is a *third* affidavit made by Francis M. Wareham, under date of March 28, 1882, which is substantially the same as his statement previously made before the Pension Bureau. In this affidavit, which the last House report considers "new and important evidence recently presented," said Wareham states:

I have made two affidavits in his (Perdue's) pension case before this. At the time of the attack upon me, as recited in former affidavits by me made, I was on the sidewalk of one of the streets of Minerva, Stark County, Ohio, on the 26th September, 1863, on duty soliciting recruits for the Union Army, and was on duty as a recruiting officer. The attack upon me was unprovoked by William R. Perdue or myself, or by any other person to my knowledge, and was without cause other than that I was a Union soldier, recruiting for the Union Army under orders. Neither William R. Perdue nor myself had been engaged in any quarrel or dispute with the mob, and the attack was without notice or cause.

In his previous affidavits, made in 1879 and 1880, Wareham had given a full history of the transaction, and had stated that the attack was made upon him; and upon claimant attempting to rescue him, he was attacked, knocked down, beaten, and kicked, and was considerably bruised, but to what extent was not known to him. Wareham does not state in either affidavit that it was at his instance and request the claimant came to his rescue. Nor is it shown that said Wareham received any bodily harm. This third affidavit of Wareham, even if it differed in any essential particular from his former statements before the Pension Bureau, had no bearing upon the *ground* of rejection. It certainly did not affect the correctness of the Commissioner's ruling on the claim.

But, in addition to the ground assigned by the Commissioner, the papers in the case show other satisfactory reasons for the rejection of the claim. The evidence falls short of establishing that any serious disabilities resulted from the injuries received at the hands of the mob. Two relatives of claimant (a sister and cousin) state that he has suffered from the injuries to his back and thigh since his discharge; and Dr. Linville, who treated him since about 1877, says that for the week prior to September 1, 1880, he daily treated claimant for *nervous prostration* emanating from injuries to spine and acute pain in region of the kidneys, &c. For most of the time since his discharge it appears that the claimant has been engaged in the practice of his profession (the law), and no reason or explanation is given for his long delay in making application for pension for the alleged injuries. But the most satisfactory statement as to claimant's condition is found in the report of the examining surgeon, made August 25, 1880. He certifies that—

There are no indications present of disease of kidneys. The applicant complains of soreness on pressure over the lower lumbar and upper dorsal vertebræ, indicating spinal irritation. If, as I think likely, this proceeds from the alleged injury, the rating ought to

e one-half total or $4 per month, though there are some indications that would point ›ward drinking as a probable cause; but as the applicant is unknown to me, on this can form no positive opinion. In respect to the injury to the left thigh, on examiation I can only find a small fatty tumor, or what I believe to be one, on the inner ›pect of thigh in the fold of the buttocks. No rating for this, as I do not suppose it as caused by the kick, and indeed cannot see how it disables in any way.

In the opinion of the committee the claim was properly rejected by the ommissioner, on the ground that the alleged disabilities did not origiate in the service and in the line of duty; and the case on its merits resents no such facts as would otherwise entitle claimant to special reef at the hands of Congress. They think the bill should not be passed, nd recommend its indefinite postponement.

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RESS, } SENATE. { REPORT
on. } { No. 684.

N THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

ON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4268.]

*tee on Pensions, to whom was referred the bill (H. R. 4268) a pension to Charles F. Paris, having examined the same, make ing report:*

Paris enlisted November 21, 1863, as a private in Company ndred and Twenty-third Indiana Volunteers, and was honarged August 25, 1865, when his company was mustered ce. On the 20th January, 1876, he filed his application for sion, alleging as the basis of his claim that—

was impaired and broken down by hardships and exposure undergone ervice; that his lungs were severely affected by said exposure, and dis- *manifested* shortly after his discharge.

equent affidavit, filed on the 18th February, 1882, he claims disability of "rheumatic pains of body," which, together ng trouble mentioned in original application, he alleges has his health as to incapacitate him for manual labor. The mits that he was never sick while in the service, and at the charge supposed that he was a sound and healthy man. ties make affidavit that at the time of his discharge he was in good health. It appears from the statements of other t claimant has been troubled with asthma to some extent He states that this asthma (or lung trouble as he calls it) ts appearance in the fall or winter of 1866 and 1867, and eumatic pains of body also commenced in 1866. His first atment, after discharge, was in 1871, when Dr. Samuel Fisher professionally to visit him, and—

suffering with *fever* and from pain of a rheumatic character of left side pon examination found inflammation and swelling of left hip and thigh.

r further states that after five days he opened the swelling, harged a large quantity of pus, and a portion of bone of lated, and was thrown off; that it healed slowly in about

*ult* of said inflammation, and of constitutional causes producing said inpplicant has been much weakened and physically disabled for ordinary abor. Applicant also suffered from an *asthmatic* condition of his lungs, on a general prostrated, condition of the nervous system.

This affidavit of Dr. Fisher was made in September, 1881. In March, 1876, the claimant seems to have been examined by the same Dr. Fisher, as the examining surgeon of the Pension Bureau, who then certified as follows:

> This applicant has been suffering for the *past six or eight years* from general debility, as he states, the result of fatigue and exposure while in the service of the United States. I find, upon examination, no serious lesion of his lung, as alleged in application, but from his present appearance am fully satisfied that there is a break-down in his general constitution and health, doubtless the result of Army service.

In another report, made September 19, 1881, Dr. Fisher states that the applicant claimed that the inflammation and swelling of hip and thigh, for which he was treated in 1871, was the result of a *difficulty* originating in the service.

John A. Cranley, in an affidavit filed September 5, 1881, states that he had worked and been with claimant a good deal of the time since the war, and—

> That for the first three or four years after his discharge claimant made what might be called a full hand at manual labor, but for the past twelve years he has not been able to make more than half a hand.

The claimant's application for pension was rejected by the Commissioner April 11, 1882, on the ground that the evidence failed to show that the alleged disabilities originated in or were the result of his military service. The development of the alleged disabilities being subsequent to discharge, it was incumbent on claimant to establish this fact by satisfactory evidence. Upon the rejection of his claim the applicant appealed to Congress for relief, and the House, on the 8th May, 1882, passed the bill under consideration, directing the Secretary of the Interior to place claimant's name upon the pension-roll, subject to the limitations and provisions of the pension laws. The case comes before Congress just as it was acted upon by the Commissioner. No additional evidence has been produced.

After a careful examination of the papers, your committee see no error in the ruling of the Commissioner, and no special reasons are presented for overruling or reversing the action of the Pension Bureau. The House report admits there is no affirmative proof showing that claimant's disabilities had their origin in or were the result of his Army service. Your committee are of the opinion that all applicants to Congress for special acts should be required to establish their claims by affirmative proof. Your committee think the bill should not be passed, and recommend its indefinite postponement.

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I CONGRESS, } SENATE. { REPORT
st Session. } { No. 685.

IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3404.]

*Committee on Pensions, to whom was referred "An act granting a pen-n to Minnie Harmon," having examined the same, make the following ort:*

April 18, 1882, the committee made an adverse report on this bill, h was as follows:

t on the 14th August, 1877, the guardian of petitioner made application for n on her behalf as the minor child of Michael Harmon, who, it is alleged, en-on or about the 19th April, 1861, as a private in Company K, Tenth Regiment Volunteers, for three years, and was killed at the battle of Chickamauga in the duty on the 20th of September, 1863. It is stated in the application that this for whom the claim for pension is made, "was born out of wedlock; that said on died leaving no widow, child, or children surviving him except the said e," who was born on the 21st day of December, 1861, and "now resides at Mil-lermont County, Ohio, with her mother." It appears that the name of Michael on is not borne on the rolls of Company K, Tenth Regiment Ohio Volunteers. umaker, late captain of Company K, *Ninth* Regiment Ohio Volunteers, states he said Harmon was a member of Company K, of that regiment, but his does not appear upon the rolls of said company and regiment. The records hat Michael Harmon, a private in Company I, Ninth Regiment Ohio Volunteers, lled in the battle at Chickamauga, September 19, 1863. It may be that he is ldier referred to in the application as Michal Harmon, of Company K, Tenth ent Ohio Volunteers. The statement of Schumaker that Michael Harmon was ate in Company K, Ninth Regiment Ohio Volunteers, and was killed at Chicka-, is the only evidence of the service and death of any soldir by that name. chumaker further states that "he knew of the child Minnie, who was born out llock, and said Michael Harmon acknowledged to affiant that he was father of ild, and that he intended to marry the mother of said child as soon as he re-l home." The claim was rejected by the Commissioner, for the reason that was no provision of law for the allowance of pension in such a case; that the having been born out of wedlock, and the parents having never married, so as to natize her, she was not entitled to a pension. From this ruling of the Commis-an appeal was taken to the Secretary of the Interior, who, on the 13th March, affirmed the decision.

re is no error in this actior of the department. The soldier's simple admission e was the father of the child, and that he intended to marry the mother as soon returned home, does not bring the case within either the letter or the spirit of 4704 Revised Statutes, which provides that illegitimate children, "if acknowl-by the father before or after *marriage*," shall be deemed legitimate and be entitled benefit of the pension laws. Two things are required to restore legitimacy in such "acknowledgment" of the father, and "the marriage" of the parents. No special is shown for making this claim an exception to the general law, which has been tly applied to the facts of the case. But, aside from this, the bill proposes to claimant's name upon the pension-roll, and to give to her the same rights as if re said soldier's legitimate child, "under the application filed in her behalf in nsion Office and numbered 232,751." The effect of this provision is that this l act shall have a retrospective operation, so as to give to claimant the benefit

of an application made in August, 1877, and properly rejected in March, 1878. I not merely an allowance of arrears of pension by special legislation, when by general law no such right attached, but grants this relief after the minor has pas the age of 16 years. The House Committee on Pensions made a favorable report u this bill, which passed the House of Representatives on the 24th March, 1882; after a careful examination of the case, your committee are of the opinion that C gress should not grant the relief sought, and they accordingly recommend that bill be not passed, and that the same be indefinitely postponed by the Senate.

Your committee can see no reason why the above finding in this c should be changed, and therefore report the bill back adversely; for t reasons assigned in their former report, and recommend that the bill indefinitely postponed.

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CONGRESS, } SENATE. { REPORT
t Session. } { No. 686.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

APHAM, from the Committee on Woman Suffrage, submitted the following

# REPORT:

[To accompany S. Res. 60.]

*lect Committee on Woman Suffrage, to whom was referred Senate lution No. 60, proposing an amendment to the Constitution of the ted States to secure the right of suffrage to all citizens without regard x, having considered the same, respectfully report:*

gravity and importance of the proposed amendment must be ob- to all who have given the subject the consideration it demands. ery brief history of the origin of this movement in the United and of the progress made in the cause of female suffrage will out of place at this time.

World's Anti-Slavery Convention was held in London on the 12th ne, 1840, to which delegates from all the organized societies were d. Several of the American societies sent women as delegates. credentials were presented, and an able and exhaustive discussion ad by many of the leading men of America and Great Britain upon estion of their being admitted to seats in the convention. They allowed no part in the discussion. They were denied seats as del- ; and, by reason of that denial, it was determined to hold conven- after their return to the United States, for the purpose of assert- id advocating their rights as citizens, and especially the right of ge.

or to this, and as early as the year 1836, a proposal had been made legislature of the State of New York to confer upon married n their separate rights of property. The subject was under consid- n and agitation during the eventful period which preceded the con- onal convention of New York in the year 1846, and the radical es made in the fundamental law in that year. In 1848 the first act he more effectual protection of the property of married women" assed by the legislature of New York and became a law. It passed ote of 93 to 9 in the assembly and 23 to 1 in the senate. It was quently amended so as to authorize women to engage in business ir own account and to receive their own earnings.

s legislation was the outgrowth of a bill prepared several years under the direction of the Hon. John Savage, chief justice of preme court, and of the Hon. John C. Spencer, one of the ablest rs in the State, one of the revisers of the statutes of New York, fterward a cabinet officer.

Laws granting separate rights of property, and the right to transact business similar to those adopted in New York, have been enacted in many, if not in most, of the States, and may now be regarded as the settled policy of American legislation on the subject.

After the enactment of the first law in New York, as before stated, and in the month of July, 1848, the first convention demanding suffrage for women was held at Seneca Falls in said State. The same persons who had been excluded from the World's Convention in London were prominent and instrumental in calling the meeting and in framing the declaration of sentiments adopted by it, which, after reciting the unjust limitations and wrongs to which women are subjected, closed in these words:

> Now, in view of this entire disfranchisement of one-half of the people of this country and their social and religious degradation; in view of the unjust laws above mentioned, and because women do feel themselves aggrieved, oppressed, and fraudulently deprived of their most sacred rights, we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of the United States.
>
> In entering upon the great work before us, we anticipate no small amount of misconception, misrepresentation, and ridicule; but we shall use every instrumentality within our power to effect our object. We shall employ agents, circulate tracts, petition the State and national legislatures, and endeavor to enlist the pulpit and the pen in our behalf. We hope this convention will be followed by a series of conventions embracing every part of the country.

The meeting also adopted a series of resolutions, one of which was in the following words:

> *Resolved*, That it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise.

This declaration was signed by seventy of the women of Western New York, among whom was one or more of those who addressed your committee on the subject of the pending amendment, and there were present participating in and approving of the movement a large number of prominent men, among whom were Elisha Foot, a lawyer of distinction, and since that time Commissioner of Patents, and the Hon. Jacob Chamberlain, who afterwards represented his district in the other house.

From the movement thus inaugurated conventions have been held from that time to the present in the principal villages, cities, and capitals of the various States, as well as the capital of the nation.

The First National Convention upon the subject was held at Worcester, Mass., in October, 1850, and had the support and encouragement of many leading men of the republic, among whom we name the following: Gerritt Smith, Joshua R. Giddings, Ralph Waldo Emerson, John G. Whittier, A. Bronson Alcott, Samuel J. May, Theodore Parker, William Lloyd Garrison, Wendell Phillips, Elizur Wright, William J. Elder, Stephen S. Foster, Horace Greeley, Oliver Johnson, Henry Ward Beecher, Horace Mann.

The Fourth National Convention was held at the city of Cleveland, in Ohio, in October, 1853. The Rev. Asa Mahan, president of Oberlin College, and Hon. Joshua R. Giddings were there. Horace Greeley and William Henry Channing addressed letters to the convention. The letter of Mr. Channing stated the proposition to be that the—

> Right of suffrage be granted to the people, universally, without distinction of sex; and that the age for attaining legal and political majority be made the same for women as for men.

In 1857, Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, then governor of Ohio, recommended to the legislature a constitutional amendment on the subject, and a select com-

mittee of the senate made an elaborate report, concluding with a resolution in the following words:

*Resolved*, That the judiciary committee be instructed to report to the senate a bill to submit to the qualified electors, at the next general election for senators and representatives, an amendment to the constitution, whereby the elective franchise shall be extended to the citizens of Ohio *without distinction of sex.*

During the same year a similar report was made in the legislature of Wisconsin. From the report on that subject we quote the following:

We believe that political equality will, by leading the thoughts and purposes of the sexes to a just degree into the same channel, more completely carry out the designs of nature. Woman will be possessed of a positive power, and hollow compliments will be exchanged for well-grounded respect, when we see her nobly discharging her part in the great intellectual and moral struggle of the age that wait their solution by a direct appeal to the ballot-box. Woman's power is at present poetical and unsubstantial; let it be practical and real. There is no reality in any power that cannot be coined into votes.

The effect of these discussions and efforts has been the gradual advancement of public sentiment towards conceding the right of suffrage without distinction of sex. In the Territories of Wyoming and Utah, full suffrage has already been given. In regard to the exercise of the right in the Territory of Wyoming, the present governor of that Territory (Hon. John W. Hoyt), in an address delivered in Philadelphia, on the 3d of April, of the present year, in answer to a question as to the operation of the law, said:

First of all, the experience of Wyoming has shown that the only actual trial of woman suffrage hitherto made—a trial made in a new country where the conditions would not happen to have been exceptionably favorable—has produced none but the most desirable results. And surely none will deny that in such a matter a single ounce of experience is worth a ton of conjecture.

But since it may be claimed that the sole experiment of Wyoming does not afford a sufficient guaranty of general expediency, let us see whether reason will not furnish a like answer. The great majority of women in this country already possess sufficient intelligence to enable them to vote judiciously on nearly all questions of a local nature. I think this will be conceded. Secondly, with their superior quickness of perception, it is fair to assume that when stimulated by a demand for a knowledge of political principles—such a demand as a sense of the responsibility of the voter would create—they would not be slow in rising to at least the rather low level at present occupied by the average masculine voter. So that, viewing the subject from an intellectual stand-point merely, such fears as at first spring up drop away, one by one, and disappear.

But it must not be forgotten that a very large proportion of questions to be settled by the ballot, both those of principle and such as refer to candidates, have in them a *moral* element which is vital. And here we are safer with the ballot in the hands of woman; for her keener insight and truer moral sense will more certainly guide her aright—and not her alone, but also, by reflex action, all whose minds are open to the influence of her example. The weight of this answer can hardly be overestimated. In my judgment, this moral consideration far more than offsets all the objections that can be based on any assumed lack of an intellectual appreciation of the few questions almost wholly commercial and economical.

Last of all, a majority of questions to be voted on touch the interests of woman as they do those of man. It is upon her finer sensibilities, her purer instincts, and her maternal nature that the results of immorality and vice in every form fall with more crushing weight.

A criticism has been made upon the exercise of this right by the women of Utah that the plural wives in that Territory are under the control of their polygamous husbands. Be that as it may, it is an undoubted fact that there is probably no city of equal size on this continent where there is less disturbance of the peace or where the citizen is any more secure in his person or property, either by day or night, than in the city of Salt Lake. A qualified right of suffrage has also been given to women in Oregon, Colorado, Minnesota, Nebraska, Kansas, Vermont, New Hampshire, Massachusetts, Michigan, Kentucky,

and New York. Of the operation of the law in the last-named State, the governor of the State, in a message to the legislature on the 12th May last, said:

> The recent law making women eligible as school trustees has produced admirable results, not only in securing the election of many of them as trustees of schools, but especially in elevating the qualifications of men proposed as candidates for school boards, and also in stimulating greater interest in the management of schools generally. The effect of these new experiences is to widen the influence and usefulness of women.

So well satisfied are the representatives in the legislature of that State with these results that the assembly, by a large majority, recently passed to a third reading an act giving the full right of suffrage to women, the passage of which has been arrested in the senate by an opinion of the attorney-general that a constitutional amendment is necessary to accomplish the object.

In England women are allowed to vote at all municipal elections and hold the office of guardian of the poor. In four States, Nebraska, Indiana, Oregon, and Iowa, propositions have passed their legislatures and are now pending, conferring the right of suffrage upon women.

Notwithstanding all these efforts, it is the opinion of the best informed men and women, who have devoted more than a third of a century to the consideration and discussion of the subject, that an amendment to the Federal Constitution, in analogy to the fifteenth amendment of that instrument, is the most safe, direct, and expeditious mode of settling the question. It is the question of the enfranchisement of half a race now denied the right, and that, too, the most favored race in the estimation of those who deny the right. Petitions, from time to time, signed by many thousand petitioners, have been presented to Congress, and there are now upon our files seventy-five petitions representing eighteen different States. Two years ago treble the number of petitions, representing over twenty-five different States, were presented.

If Congress should adopt the pending resolution, the question would go before the intelligent bodies who are chosen to represent the people in the legislatures of the various States, and would receive a more enlightened and careful consideration than if submitted to the masses of the male population, with all their prejudices, in the form of an amendment to the constitution of the several States. Besides, such an amendment, if adopted, would secure that uniformity in the exercise of the right which could not be expected by action from the several States.

We think the time has arrived for the submission of such an amendment to the legislatures of the States. We know the prejudices which the movement for suffrage to all, without regard to sex, had to encounter from the very outset, prejudices which still exist in the minds of many. The period for employing the weapons of ridicule and enmity has not yet passed. Now, as in the begining, we hear appeals to prejudice and the baser passions of men. The anathema "woe betide the hand which plucks the wizard beard of hoary error" is yet employed to deter men from acting upon their convictions as to what ought to be done with reference to this great question. To those who are inclined to cast ridicule upon the movement, we quote the answer made while one of the early conventions was in session in the State of New York:

> A collection of women arguing for political rights and for the privileges usually conceded only to the other sex is one of the easiest things in the world to make fun of. There is no end to the smart speeches and the witty remarks that may be made on the subject. But when we seriously attempt to show that a woman who pays taxes ought not to have a voice in the manner in which the taxes are expended, that a woman whose property and liberty and person are controlled by the laws, should have no voice in framing those laws, it is not so easy. If women are fit to rule in the mon-

it is difficult to say why they are not qualified to vote in a republic; nor can greater indelicacy in a woman going up to the ballot-box than there is in a pening a legislature or issuing orders to an army.

ll who are more serious in their opposition to the movement, we them of the words of Abraham Lincoln:

or all sharing the privileges of the government who assist in bearing its bur- no means excluding women.

ishop Simpson:

ve that the vices in our large cities will never be conquered until the ballot to the hands of women.

he Rev. James Freeman Clark:

ot think our politics will be what they ought to be till women are legislators rs.

eorge William Curtis:

n have quite as much interest in good government as men, and I have never read of any satisfactory reason for excluding them from the ballot-box; I more doubt of their ameliorating influence upon politics than I have of the e they exert everywhese else.

ishop Gilbert Haven:

w of the terrible corruption of our politics, people ask, can we maintain uni- ffrage? I say no, not without women. The only bear garden in our com- is the town meeting and the caucus. Why is this? Because these are the ces at which women are not present.

overnor Long, of Massachusetts:

at my conviction of the right of woman suffrage. Because suffrage is a right a grace it should be extended to women who bear their share of the public d who have the same interest that I have in the selection of its officials, and ing of its laws which affect their lives, their property, and their happiness.

erbert Spencer:

ver much the giving of political power to women may disagree with our of propriety, we conclude that, being required by that first prerequisite to happiness, the law of equal freedom, such a concession is unquestionably d good.

of Plato:

administration of a state, neither a woman as a woman, nor a man as a man special functions, but the gifts are equally diffused in both sexes. The same nity for self-development which makes man a good guardian will make woman guardian, for their original nature is the same.

as become a custom, almost universal, to invite and to welcome esence of women at political assemblages, to listen to discussions the topics involved in the canvass. Their presence has done much l the elevation, refinement, and freedom from insincerity and risy in such discussions. Why would not the same results be ht out by their presence at the ballot-box? Wherever the right en exercised by law, both in England and in this country, such en its effect in the conduct of elections.

framers of our system of government embodied in the Declaration lependence the statement that to secure the rights which are declared to be inalienable and in respect to which all men are d equal, "*governments are instituted among men deriving their just from the consent of the governed.*" The system of representative ment they inaugurated can only be maintained and perpetuated wing all citizens to give that consent through the medium of the box; the only mode in which the "consent of the governed" can

be obtained. To deny to one-half of the citizens of the republic all participation in framing the laws by which they are to be governed, simply on account of their sex, is political despotism to those who are excluded, and "taxation without representation" to such of them as have property liable to taxation. Their investiture with separate estates leads, logically and necessarily, to their right to the ballot as the only means afforded them for the protection of their property, as it is the only means of their full protection in the enjoyment of the immeasurably greater right to life and liberty. To be governed without such consent is a clear denial of a right declared to be inalienable.

It is said that the majority of women do not desire and would not exercise the right, if acknowledged. The assertion rests in conjecture. In ordinary elections multitudes of men do not exercise the right. It is only in extraordinary cases, and when their interests and patriotism are appealed to, that male voters are with unanimity found at the polls. It would doubtless be the same with women. In the exceptional instances in which the exercise of the right has been permitted they have engaged with zeal in every important canvass. Even if the statement were founded in fact, it furnishes no argument in favor of excluding women from the exercise of the franchise. *It is the denial of the right of which they complain.* There are multitudes of men whose vote can be purchased at an election for the smallest and most trifling consideration. Yet all such would spurn with scorn and unutterable contempt a proposition to purchase their *right to vote*, and no consideration would be deemed an equivalent for such a surrender. Women are more sensitive upon this question than men, and so long as this right, deemed by them to be sacred, is denied, so long the agitation which has marked the progress of this contest thus far will be continued.

Entertaining these views, your committee report back the proposed resolution without amendment for the consideration of the Senate, and recommend its passage.

E. G. LAPHAM.
T. M. FERRY.
H. W. BLAIR.

The Constitution is wisely conservative in the provision for its own amendment. It is eminently proper that whenever a large number of the people have indicated a desire for an amendment, the judgment of the amending power should be consulted. In view of the extensive agitation of the question of woman suffrage, and the numerous and respectable petitions that have been presented to Congress in its support, I unite with the committee in recommending that the proposed amendment be submitted to the States.

H. B. ANTHONY.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT 686, Part 2.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Woman Suffrage, submitted the following

# VIEWS OF THE MINORITY.

[To accompany joint resolution S. R. 60.]

The undersigned are unable to concur in the report of the majority recommending the adoption of the joint resolution proposing an amendment to the Constitution of the United States, for reasons which they will now proceed to state.

We do not base our dissent upon any ground having relation to the expediency or inexpediency of vesting in women the right to vote. Hence we shall not discuss the very grave and important social and political questions which have arisen from the agitation to admit to equal political rights the women of our country, and to impose on them the burden of discharging, equally with men, political and public duties.

Whether so radical a change in our political and social system would advance the happiness and welfare of the American people, considered as a whole, without distinction of sex, is a question on which there is a marked disagreement among the most enlightened and thoughtful of both sexes. Its solution involves considerations so intimately pertaining to all the relations of social and private life—the family circle—the status of women as wives, mothers, daughters, and companions to the functions in private and public life which they ought to perform, and their ability and willingness to perform them—the harmony and stability of marriage, and the division of the labors and cares of that union—that we are convinced that the proper and safe discussion and weighing of them would be best secured by deliberations in the separate communities which have so deep an interest in the rightful solution of this grave question.

Great organic changes in government, especially when they involve, as this proposed change does, a revolution in the modes of life, long-standing habits, and the most sacred domestic relations of the people, should result only upon the demand of the people, who are to be affected by them. Such changes should originate with, and be molded and guided in their operation and extent by, the people themselves. They should neither precede their demand for them, nor be delayed in opposition to their clearly expressed wishes. Their happiness, their welfare, their advancement, are the sole objects of the institution of government; of these they are not only the best but they are the exclusive judges. They have commissioned us to exercise for their good the great powers which they have intrusted to us by their letter of attorney, the Constitution; not to assume to ourselves a superior wisdom, or usurp a guardianship over them, dictating reforms not demanded by them, and attempting to grasp power not granted.

The organization of our political institutions is such that the great mass of the powers of government, the proper exercise of which so deeply concerns the welfare of the people, is left to the States respectively, or to the people. In that depository, the will of the people is most easily and certainly ascertained, and the exercise of power more directly under their control and guidance. Our free institutions have had their great development and excellence, and owe their stability and beneficent operation, more to causes growing out of, and connected with, the direct exercise of the power of the people in local self-government than to all other causes combined. Recent events, though tending strongly to centralization, have not destroyed nor impaired in the public mind the inestimable value of local self-government. Among the powers which have hitherto been esteemed as most essential to the public welfare, is the power of the States to regulate, each for itself, their domestic institutions in their own way; and among those institutions none have been preserved by the States with greater jealousy than their absolute control over marriage and the relation between the sexes.

Another power of the States, deemed by the people when they assented to the Constitution of the United States most essential to its perpetuation and the public welfare, was the right of each State for itself to determine the qualifications of electors. Wherever the Federal Constitution speaks of elections for a Federal office, it adopts the qualifications for electors prescribed by the State in which the election is to be held.

Nor has this fundamental rule been departed from in the Fifteenth Amendment. That impairs it only to the extent that race, color, or previous condition of servitude shall not be made a ground of exclusion from the right of suffrage. In all else that pertains to the qualifications of electors the absolute will of the State prevails. This amendment was inserted from considerations which pertain to no other part of the question of suffrage. The negro race had been recently emancipated; it was supposed that the antagonism between them and their old masters and the prejudice of race would be such as to obstruct the equal enjoyment of the rights of freedom conferred by the national forces, and would prevent the white race of the South from admitting the negro race, however deserving it might be, to equal political privileges. And, moreover, it was deemed by the North a point of honor that, having conferred freedom on the negro, he should be provided with the right of suffrage.

None of these considerations apply in the present case. It is not pretended that any such antagonism or prejudice exists between the sexes. It is not pretended that women have been redeemed from an intolerable slavery by the power of the government. It is not pretended that the sex in whose hands is the political power of the States are unwilling, from any cause, to do full justice to the other; for it is conceded that if the proposed amendment should be adopted, its incorporation into the Constitution must result from the voluntary action of that sex in whom is vested this political power. No good reason has been given why the Congress of the United States should force or even hasten the States into such action, and no such reason can be given without a reversal of the theories on which our free institutions are based.

The history given by the majority, of the legislation of the several States in relation to the rights of persons and property of married women showing as it does a steady advance in the abolition of their common-law disabilities, conclusively demonstrates that this question may be safely left for solution where it now is and has always hitherto belonged. The public mind is now being agitated in many of the States as to the rights of women, not only as to suffrage, but as to their engaging in

various employments from which they have hitherto been excluded. This exclusion from certain employments has not been the result of municipal but of social laws—the strongest of all human regulations. As these social laws have been modified, so the sphere of woman's activities and usefulness has been enlarged. These social laws are in the main the groundwork of the exclusion of women from the right of suffrage. In the establishment of these laws, as in their modification, women themselves have even a greater influence than men. Their disability to vote is, therefore, self-imposed; when they shall will otherwise, it is not too much to say that the disability will no longer exist. If in the future it shall be found that these laws deny a right to women the enjoyment of which they desire, and for the exercise of which they are qualified, it cannot be doubted that they will give way. If, on the contrary, neither of these shall be discovered, it will happen that the exclusion of suffrage will not be considered as a denial of a right, but as an exemption granted to women from cares and burdens which a tender and affectionate regard for womanhood refuses to cast on them.

We are convinced, therefore, that the best mode of disposing of the question is to leave its solution to that power most amenable to the influences and usages of society in which women have so large and so potential a share, confident that at no distant day a right result will be reached in each State which will be satisfactory to both sexes and perfectly consistent with the welfare and happiness of the people. Certainly this must be so if the people themselves, the source and foundation of all political power, are capable of self-government.

At two of its meetings the committee listened with great pleasure to several eminent ladies who appeared before it as advocates of the proposed amendment. At none of the meetings of the committee, including that at which the members voted on the proposed amendment, was there any discussion of this important subject; none was asked for or desired by any member of the committee, and the vote was taken.

The reports of the majority and of the minority of the committee are therefore to be construed only as the individual opinions of the members who respectively concur in them. They are in no sense to be treated as the judgment of a deliberative body charged with the examination of this important subject.

The foregoing leads us to but one recommendation: that the committee should be discharged from the further consideration of the subject, that the resolution raising it be rescinded, and that the proposed amendment be rejected.

J. Z. GEORGE.
HOWELL E. JACKSON.
JAMES G. FAIR.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 687.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2335.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2335) granting an increase of pension to Nicholas W. Barnett, having considered the same, respectfully report:*

The claimant (sergeant Company I, Twenty-fifth Indiana Volunteers) is pensioned at the rate of $18 per month for loss of left arm. His pension was granted July 27, 1865. He applied for increase June 16, 1880, alleging catarrh of the nose and ear, which he says has resulted in the loss of the sense of smell and impairment of his sense of hearing. His application was rejected, December 1, 1880, upon the ground that the catarrh, even if ratable (not being so in the opinion of the medical reviewer), was not shown by medical or record evidence to have existed in service or at discharge.

Certificate of examining surgeon, filed July 10, 1880, says, "there is slight nasal catarrh," which disability he rates at $2 per month. The affidavit of his family physician treats it as more serious, and certifies that the hearing of one ear is almost destroyed by his catarrh. There is no record evidence of his treatment for catarrh while in service. He alleges that it commenced in 1861, but, if so, it was not of sufficient consequence to impair his service or to prevent his re-enlistment in 1864. The committee have had no additional evidence produced, and the case appears to have been fully and carefully considered in the Pension Office, and no reason exists for overruling the decision of the Commissioner.

The committee recommend the indefinite postponement of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 688.

IN THE SENATE OF THE UNITED STATES.

JUNE, 5, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1142.]

*The Committee on Pensions, to whom was referred the bill (S. 1142) granting a pension to Mary V. Wilt, having had the same under consideration, respectfully report:*

Samuel Wilt was a second lieutenant in Company A, First Maryland Volunteers, in the Mexican war, where he contracted disease for which he was pensioned. At the breaking out of the rebellion he was made captain of Company D, Twelfth Pennsylvania Reserves, August 10, 1861, and was mustered out of service December 5, 1861, for disability, under section 10 of the act of July 22, 1861, upon the adverse report of an examining board. He died of consumption May 3, 1863. The petitioner now enjoys a pension as the widow of a second lieutenant, and asks that it may be increased to the pension of a captain's widow, alleging that his service as captain in the late war caused the consumption of which he died. She has made no application to the Pension Office, and furnishes no medical evidence that his death was traceable to his service while captain as aforesaid.

The committee recommend the indefinite postponement of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 689.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1543.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1543) granting a pension to Albert O. Miller, have had the same under consideration, and respectfully report:*

Albert O. Miller was a seaman in the United States Navy; enlisted September 3, 1864, and was discharged September 4, 1865. He participated in the capture of Fort Fisher January 15, 1864. He filed an application for a pension February 9, 1874, alleging that in consequence of having been drenched with the surf and obliged to remain on the beach all night at the time of the capture of Fort Fisher, he suffered a severe attack of neuralgia and rheumatism, and that he has never recovered from the same; and that paralysis, blindness, and total helplessness have resulted therefrom.

His application was rejected for the reason that he was unable to prove that his disability was due to his service in the Navy. No record of disability is to be found, and the claimant has been unable to find his commanding officers or comrades, their residences being unknown. His soundness at the time of his enlistment is well established; and medical treatment for the disability alleged is shown to have been continuous from the time of his discharge till now. A special agent detailed to cross-examine the claimant reports that he is satisfied of his honesty and integrity. His truthfulness, good character, and reliability are certified to by Judge Mercer, of the supreme court of Pennsylvania, who recommends him as worthy of government aid.

Upon an examination of the case the committee are satisfied that the disability of the claimant originated, as claimed by him, in the service and in the line of duty, and therefore recommend the passage of the bill.

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 690.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1796.]

*The Committee on Pensions, to whom was referred the bill (S. 1796) for the relief of Elizabeth H. Spotts, having considered the same, make the following report:*

Rear-Admiral James H. Spotts died in service March 9, 1882, from disease traceable to his service, after forty-five years' active and faithful service. The claimant is his widow, and is left without adequate means of support for herself and son.

Congress has by special act granted pensions at the rate of $50 per month to widows of naval officers of high rank, where the services of the deceased had been long and faithful, and where the widow's circumstances were necessitous. This case being similar to those in which such pensions have been granted, the passage of the bill is recommended, with an amendment, striking out all after the word "the" line 7 and inserting the words "passage of this act."

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 691.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1437.]

*The Committee on Pensions, to whom was referred the bill* (S. 1437) *granting a pension to Amos Chapman, having had the same under consideration, respectfully report:*

That Amos Chapman was employed as scout and guide for the "Indian Territory Expedition," commanded by Colonel and Brevet Major-General N. A. Miles, U. S. A.

On the 12th of September, 1874, while he and *five* others were conveying official dispatches from a camp of the expedition on McClellan Creek, Texas, to Camp Supply, Indian Territory, they were met, attacked, and surrounded near the Washita River, Texas, by a force of 125 hostile Kiowas and Comanches, whom they fought so stubbornly as to compel them to abandon the attack.

During this fight Amos Chapman received a wound that rendered the amputation of his leg necessary.

The above statement is certified to by the officers of the command in which he served, to wit:

Nelson A. Miles, colonel Fifth Infantry, commanding Indian Territory expedition;

C. C. Compton, major Sixth Cavalry, commanding battalion;

G. W. Baird, first lieutenant and adjutant, Fifth Infantry;

Frank D. Baldwin, first lieutenant, Fifth Infantry, and chief of scouts;

Dr. Cleary, post surgeon, U. S. A., Camp Supply;

who also recommend that a pension be granted him in recognition of his heroic services and valuable assistance to the Army.

In view of the fact that Congress has heretofore in several instances passed special acts granting pensions to scouts suffering disability from wounds received in the discharge of their duty and under orders of Army officers, the committee recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 692.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1336.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1336) granting a pension to Elisa A. Murray, dependent mother of Dwight E. Murray, having carefully considered the same, make the following report:*

That the House Committee on Invalid Pensions have embraced the facts in their report made the present session, which are as follows:

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1336) granting a pension to Elisa A. Murray, have had the same under consideration, and beg leave to submit the following report:*

The committee find, from an examination of the papers on file in the original pension claim at the Pension Office, that the petitioner is the mother of Dwight E. Murray, who was a private in the Ninth Ohio Battery, and who was killed while in the service; that he enlisted October 11, 1861, and died September 17, 1863. The mother's application was filed November 10, 1878, and was rejected by the Pension Office August 6, 1879, on the ground that the soldier at the time he was killed was not in the line of duty.

The evidence in the case shows the dependence of the mother upon the soldier and his contributions to her support. The Adjutant-General's report in the case reports him absent without leave since September 17, 1863, supposed to have been captured by guerrillas. He was afterwards marked as a deserter on subsequent rolls. The evidence of officers and comrades on file in the case shows that the soldier with one or two comrades started out with the implied permission of their officers upon a foraging expedition while the company was encamped hear Tullahoma, Tenn.; that while out upon such an expedition they were killed by bushwhackers, their bodies found, but no record made of their death on the company rolls. Lieutenant Cowles, of the company, states that the soldier came to his tent with one John Wilson, a comrade, and said they were going foraging in the country. The officer further states that he loaned to the deceased soldier his revolver and that they took with them two good horses. Comrades of the deceased soldier state that they had personal knowledge of the deceased and his comrade Wilson starting out on the foraging hunt, and that it was with the implied permission of their officers; that such permission had been allowed to the men of the command very frequently, and that they did not deem it any transgression of orders, inasmuch as their absence was with the full knowledge of the officers of the company. They further show that the soldier was killed while on this expedition, having been shot by bushwhackers or guerrillas with whom the immediate country was infested.

Your committee are not satisfied from the evidence as to how the soldier met his death, but the evidence on file is conclusive that he did not meet his death in line of duty, as the affiants in the case confess that death resulted from a foraging expedition. Your committee are of the opinion that it would be exceedingly injudicious to go outside of the general rule in these cases, and therefore report the bill (H. R. 1336) back with the recommendation that it be indefinitely postponed.

O

CONGRESS, } SENATE. { REPORT
Session. } { No. 693.

IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

HILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1264.]

*ommittee on Pensions, to whom was referred the bill (S. 1264) to in-se the pension of Joseph N. Abbey, having carefully examined the same, e the following report:*

t Joseph N. Abbey was mustered into service as a second lieu-t in Company G, One hundred and twelfth Pennsylvania Volun-January 8, 1862, and was promoted to the rank of Captain Novem-, 1862. The Adjutant-General's Office files in evidence a sur-certificate, dated "Chapel Springs Hospital, Fort Saratoga, D. arch 1, 1864," recommending said Abbey for a leave of absence, in the surgeon says:

as carefully and repeatedly examined this officer during the last year, and at he has had frequent attacks of malarial fever, complicated with pleuritic uralgic pain. He is seldom free from pain from the latter complaints, and, to frequent attacks of the former, their combined influence has unfitted him y much of the time. The post at which his battery is serving is especially with malaria, and, in my opinion, unless he is permanently removed from it, never recover.

this certificate said Abbey was allowed a sick leave. The return ay, 1864, reports him "absent, sick at Washington, D. C., since 7, 1864." On November 2, 1864, he was honorably discharged on nt of physical disability. A transcript from the records of the on-General's Office reports:

ain Abbey, Company K, One hundred and twelfth Pennsylvania Volunteers, ated at P. H., Fort Saratoga, D. C., as follows: February 23, 1863, for furun-March 25 to 30, 1863, for diarrhœa; June 17, 1863, for dysentery and diarrhœa; to 7, 1863, for dysentery; September 23, 1863, for intermittent fever; October 1863, for typho-malarial fever; November 6 to 21, 1863 (when furloughed for lays), for quartan int. fever and pleurodymia; and January 25, 1864, for rheu-. He was admitted to treatment by the attendant surgeon of volunteer officers hington, D. C., May 23, 1864, for acute dysentery, and detailed on C. M. June 10.

n G. Moore, in an affidavit filed December 30, 1879, states that he own claimant since 1859, and knows that at the time of enlistment s a sound man; that he visited said Abbey when he was sick at Lincoln, Virginia, and that during the entire period intervening late of discharge to the present time he has been suffering with e of the liver and spleen, and has not been able to perform manual

t. R. M. Gomedie, in an affidavit, swears that claimant was at time of enlistment, and contracted intermittent fever at Fort ln, Virginia, April 1, 1863; that during every fall and spring while

he remained in the service he suffered from like attacks of said fever, and was subsequently discharged on account of same.

Mrs. Hannah Turner and Henry C. Ford make affidavit that at different intervals during the whole period intervening between the spring of 1865 and fall of 1876, the said Abbey received more or less treatment (medical) from Dr. Wm. M. Tanner—now deceased—for enlarged liver and spleen, as a result of malarial fever contracted in the Army.

Dr. Townsend, who took medical charge of claimant in January, 1877, makes an affidavit that he treated claimant for enlarged liver and spleen until October 15, 1877, and that said Abbey was not able to perform labor during that time.

Dr. Wm. A. Hammond, in a statement dated November 25, 1879, says claimant has been under his charge for the past six months for locomotor ataxia, &c. Upon this and other medical testimony the said Abbey was pensioned January 23, 1880, at the rate of $15 per month, to date from November 3, 1864, for effects of malarial poisoning. This pension was afterwards increased to $24 per month, to date from November 26, 1879, which pension the said Abbey now receives. There is in evidence an affidavit made by said J. N. Abbey the 26th of November, 1881, in which he says that—

> He has for the past six and one-half years been so totally disabled that he was unable to perform any manual labor; and, moreover, his physical condition has, during that time, been such that he was, and is, compelled to keep a body-servant to render him personal aid and attendance.

An affidavit in evidence, made by Dr. Hamilton, of Philadelphia, Pennsylvania, March 7, 1882, states:

> I have known Capt. Joseph N. Abbey for the past three years, during which tim he has required my constant attention as medical adviser, with the exception of a period of three months, which was spent under the care of another practitioner. Upon taking charge of the case I made a thorough examination, with the following result: skin, pulse, and temperature, normal; violent and stupefying pains in the occiput, accompanied with severe attacks of vertigo, faintness, and extreme prostration; almost daily there occurred violent spasmodic action of the muscles of the throat and neck, with a sense of impending suffocation; sound of heart, normal, but the organ very irritable; severe attacks of neuralgia of the chest and of the stomach. There was considerable enlargement of the spleen, with constant pain; also enlargement of the liver, with prostration of its function; constipation and great weakness, and numbness in the lower extremities. The symptoms above enumerated at times became aggravated to such a degree that for two or three consecutive days at a time he was confined to his bed, but owing to the force of his indomitable will almost every day he has been conveyed to his office, frequently in a condition of the most intense agony. During the time in which he has been under my care I have been able to relieve the attacks at intervals, but the general condition of prostration and suffering still continues. The patient at present requires the care and watchfulfulness of a competent nurse. Knowing that his means were limited, I have not heretofore insisted upon the procuring of such a person, but now deem it of the most paramount importance. The case of Captain Abbey is one that commends itself to the favorable consideration of those whose duty it is to provide for the soldiers who have lost their health in battling for the welfare of their country. The cause of the present fearful suffering of Captain Abbey is exposure to malarial influences while in the service of the United States.

Dr. Samuel Cleveland makes affidavit that he has treated Joseph N. Abbey, and—

> Found enlargement of liver and spleen, which we are accustomed to recognize as malarial; profound disturbances of nervous centers; cerebral—involving pains of almost every kind and paretic conditions, transitory, but following in rapid succession; cardiac—involving true angina and solar, creating gastric inability.

Dr. Cleveland further says:

> That the condition of Joseph N. Abbey, while under his treatment, rendered him wholly unfit for any labor from a physical standpoint, though his will has carried him by intervals through necessary work, greatly to his physical detriment.

conveyed to and from the house in a carriage, &c.
ound of rejection at the Pension Office was the doctor's inabil-
termine whether the disability would be permanent, or was of
aracter as to bring him under the general law. The medical
vers a period of twenty years, and shows conclusively that the
is a continuous one, and the medical affidavits filed since the
at the Pension Office show that his infirmities are increasing,
ubtedly will soon place him in a condition of the most com-
plessness. Now, judging from the long medical record, the
of the claimant, and the fact that he is so much worse to-day
was twenty years ago, and now has to employ the services of a
attendant, are pretty conclusive proofs as to the permanency
ase.
ommittee regard this case as one of extreme disability and suf-
nd therefore recommend the passage of Senate bill 1264, with
wing amendment: In line seven, immediately preceding the
lollars," strike out the words "seventy-two," and insert in lieu
he word "fifty."

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 694.

IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of Robert L. Willey, praying for a pension, have carefully considered the same, and report as follows:*

That Robert L. Willey was a corporal of Company H, First Regiment Heavy Artillery, Maine Volunteers; that he enlisted in August, 1862, and served until the month of April, 1865, when he received a furlough to make a visit home. The claimant says in his petition that he—

Was in Cherryfield when the news was received of the surrender of Lee at Appomattox, and said Willey and a comrade of the same regiment (also at home on furlough), were requested by the principal citizens to take charge of a small gun and fire a salute. He did so, and, the gun being old and rusty, as he was loading for the second or third time the charge took fire prematurely, and his right arm was so shattered that the surgeon found it necessary to amputate it at the shoulder joint.

The case was rejected at the Pension Office on the ground—

That the claimant was on furlough—not a veteran or sick furlough—at the time he incurred the disability on account of which he claims pension.

Your committee are of the opinion that the cause of rejection should be sustained, inasmuch as the soldier received his wound while on a furlough and not in line of duty. Your committee therefore recommend that the prayer of the petitioner be not granted.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 695.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1997.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1997) granting a pension to Joel R. Carter, having carefully examined the same, make the following report:*

That the Committee on Invalid Pensions, House of Representatives, have at the present session made a favorable report in this case covering the points in evidence, which your committee adopt, as follows:

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1997) granting a pension to Joel R. Carter, having had the same under consideration, would respectfully report:*

The adjutant-general of Indiana certifies that this man's name is not found upon the records of Company D, Eighty-second Regiment, Indiana Volunteers, either as a member at original organization or as a recruit for said company.

The assistant adjutant-general of the United States certifies that the name of Joel R. Carter does not appear on the rolls of Capt. Wm. W. Browning's Company D, or on recruit-rolls of Eighty-second Indiana Volunteers on file in his office, and that no enlistment paper of him is on file.

But, notwithstanding this defect in the records, the evidence shows conclusively that this man was enlisted in said company about the 21st of August, 1862, and went with said company to Madison, where there was a camp, and where the Eighty-second Regiment took the place of another regiment (which had been ordered to the front), and were on duty as guards about two weeks before they were examined; and while on such duty, exposed to wet weather day and night, and not having drawn any blankets or tents, this man contracted a severe cold, producing rheumatism, by reason whereof the mustering officer refused to muster him in; and he has not been able since to walk without crutches, although up to the time of his enlistment he had been a stout and hearty man, free from disease. These facts are shown—

1st. By the affidavit of the claimant.

2d. By the affidavit of his captain, who swears to the enlistment and to the service in camp at Madison, and that the disability is total, and was caused by exposure in the camp.

3d. By the affidavit of his family physician, who swears that before enlistment the man was of sound health in all respects, but came home with acute rheumatism, which resisted treatment and became chronic, and has totally disabled him.

4th. By the affidavits of William Brummel, Thompson Maguire, George W. Marshall, and James Hampton, members of the same regiment, who swear that they were with this man in Camp Emerson, at Madison, and that while he was there on duty he was attacked with rheumatism, so that he could not be mustered.

5th. By the certificate of the examining surgeon of the Pension Office, who states that the disability is total and probably permanent.

It may be observed that the evidence stated above in No. 4 was not considered in the brief of the Pension Office on which the claim was rejected.

The only question is whether all this accumulated evidence is sufficient to overcome the presumption arising from the defective records, and to show that in fact Joel R.

Carter was an enlisted man in Company D, of the Eighty-second Indiana Regiment, in service as such at Madison, and there in the line of his duty incurred the disability for which he seeks a pension.

The committee, in view of these facts, are of the opinion that the bill should pass with the following amendment: Strike out all after the word "volunteers" in line 7 of said bill.

The Commissioner of Pensions, in a letter addressed to the committee, states: "The claim was rejected upon the ground that the claimant was not an enlisted man." Your committee are of the opinion that the evidence on this point is well directed to establish the fact that he was enlisted, his captain making a positive affidavit to that effect, substantiated by other affidavits of comrades. It is not within the province of the Pension Office to relieve against a defect of record matter, but your committee are of the opinion that equity demands that the claimant should not suffer on account of such defective record, and therefore report the bill (H. R. 1997) back with a recommendation that it pass.

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'TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 696.

# IN THE SENATE OF THE UNITED STATES.

JUNE 5, 1882.—Ordered to be printed.

r. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1239.]

*he Committee on Pensions, to whom was referred the bill (S. 1239) granting a pension to Joseph N. Abbey, having carefully considered the same, make the following report:*

That Senate bill 1264, first session of the Forty-seventh Congress, as reported favorably at this session by the Committee on Pensions, ranting an increase of pension to the said Joseph N. Abbey. Your ommittee, therefore, in consideration of these facts, recommend that the ill (S. 1239) be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 697.

# IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

Mr. VANCE, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 1735.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 1735) granting the right of way to the Annapolis and Baltimore Short-Line Railroad Company through the government farm, and to sell said railroad company a part of said government farm, connected with the Naval Academy at Annapolis, Md., having had the same under consideration, beg leave to submit the following report:*

The passage of this bill, with certain specified amendments, is recommended by the former Secretary of the Navy, Mr. Hunt, in a letter to the chairman of the House Committee on Naval Affairs, but no reasons are set forth as to the special necessity for the proposed railroad within the limits of the Academy grounds, or the supposed benefit that that institution would derive from its presence. Very strong and cogent reasons, however, are given in the following letter from Admiral Porter why this road should not run as designed by the bill; in which views your committee unanimously concur:

OFFICE OF THE ADMIRAL,
*Washington, D. C., March 22, 1882.*

MY DEAR SIR: I received your letter with inclosed bill, and beg leave to answer it. I have been several times approached on this subject by interested persons, asking me to recommend to the department to grant a right of way through the public grounds at Annapolis, Md., which I have invariably refused to do, first, because I had no confidence in some of the persons interested in the scheme; second, because I never believed it was the intention of these persons to build a road, as they pretend is their object.

That piece of property next to Saint John's College and north of the Academy was purchased by the United States Government with the intention of getting possession of all the property back of the creek and down to the river, so that the Naval Academy could have a good-sized drill-ground, which at present it has not.

As this piece of ground would become the terminus of the road, if built, it would interfere very much with the quietude so necessary to students. The constant running of locomotives night and day under the windows of the main building at the Academy would be almost fatal to the institution. The very object of purchasing the ground was that no structure should be erected that would in the least interfere with the Naval Academy.

As to the right of way through the government grounds, it is not necessary to enable those people to build a road if they really intend to do so. They could pass to the west of the hospital, which would enable the road to debouch at a point in the town where traffic could be more easily managed.

The projectors of this railroad have put forth the idea that it is to be a great avenue of traffic with Baltimore in winter, when Baltimore harbor is frozen over. In case that Annapolis should become a place of foreign traffic, ships would have to come up to the

lower end of the Academy, where the ferry-boat now runs, right under the windows of the main building, and you can imagine the pandemonium that would be established at a point where the most perfect quiet should prevail. I think the first consideration should be the Naval Academy and its necessities.

I have reason to suppose that the persons engineering this scheme have no capital with which to build such a road as they propose, and their object is to get hold of the land near the Naval Academy for other purposes. The reason why these people do not want to pass west of the hospital, which is the proper route, is because they will have to pay higher for the land, and they expect to get the government land for little or nothing.

In my opinion the scheme, if carried out, will be a great detriment to the Naval Academy, which should be kept isolated as much as possible.

I have given you my candid opinion in this matter, and am satisfied that every superintendent of the Naval Academy who studies its interests will agree with me.

I have the honor to remain, very respectfully, yours,

DAVID D. PORTER,
*Admiral.*

Hon. B. W. HARRIS, M. C.,
*Chairman Naval Committee, House of Representatives.*

The committee therefore report the bill back, and recommend its passage with an amendment providing for the location of said line only across the northwest corner of the government farm, and entering the city at a point more distant from the Academy buildings, and other amendments.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 698.

# IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1807.]

*The Committee on Pensions, to whom was referred the bill (S. 1807) granting an increase of pension to Joel C. Lathrop, have had the same under consideration, and report as follows:*

Joel C. Lathrop enlisted in the service December 12, 1861, as a private in Company H, Fourteenth Regiment, New York Volunteers; was discharged the service December 24, 1862; disability, injury to left ankle. Pension granted January 15, 1881, to begin December 25, 1862, at $4 per month, to January 1, 1875. Filed his application for reinstatement and increase of pension August 24, 1881, which was rejected October 25, 1881. In his application for reinstatement upon the pension rolls and for an increase of pension, he says:

That since January 1, 1875, he has not drawn pension; that his disability, injury of left leg, has continued and still disables him from the performance of manual labor.

* * * * * * *

That the disability for which he was pensioned still continues in a pensionable degree and is worse than before, and he claims increase therefor. He finds it difficult to walk over uneven surfaces; his ankle is weak, and at times painful, especially in damp weather.

He was examined by a board of surgeons of Washington, D. C., July 14, 1879; again by the same board June 30, 1880; and again by same board October 12, 1881; and said board at each examination certifies it as their opinion that—

Lathrop is not incapacitated for obtaining his subsistence by manual labor by the cause stated.

This, in the mind of your committee, is conclusive against this claim, and therefore they recommend that the bill do not pass.

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ONGRESS, } SENATE. { REPORT
Session. } { No. 699.

IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

ATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 791.]

*mmittee on Pensions, to whom was referred the bill (S. 791) for the of Owen M. Long, have had the same under consideration, and beg to report as follows:*

nant enlisted in the Eleventh Illinois Volunteers September 25, nd held the rank of surgeon; was discharged April 1, 1864, on t of having contracted chronic diarrhœa. He filed an application nsion April 26, 1880; was placed on the pension rolls July 11, ith pension rated at $12.50 from April 2, 1864, to July 8, 1881, ereafter to draw pension at the rate of $18.75 per month.

bill provides for a pension at the rate of $25 per month from Sep- 24, 1864, deducting amount received by him for pension during riod, and in future to have $25 per month pension.

evidence is voluminous, from which it appears that claimant has l continuously with chronic diarrhœa since the battle of Fort on. The proof is full and satisfactory as to soundness at date ring service. The proof shows that claimant has suffered more from chronic diarrhœa since his discharge, although a number of nesses testify only to the declarations of the claimant, made at s times and dates since his discharge, to the effect that he was ng from his old complaint. Your committee have no doubt that nt contracted the disease complained of in the service, and that suffers from its effects, but your committee has steadily refused mmend the payment of arrearages. The only other question in se is as to whether he should have an increase from $18.75 per to $25 per month.

department seems to have been more than usually careful in oring to reach a just conclusion in this case. Claimant was ex- by a board of surgeons of the city of Washington, D. C., De- 1, 1880; June 27, 1881; July 8, 1881; and again December 8,

certificate of the examination July 8, 1881, in part is as follows:

venty-two; pulse, 96; respiration, 20. This man is a large, well-preserved is age; claims diarrhœa and nothing else; says that he has a number of pas- ily, and that they are but moderately controlled by medicine. We find the nuch coated, some tympanitis. He may suffer from diarrhœa as alleged, and idence shows as bad a condition as he claims, he is entitled to three-fourths.

In the last examination the certificate has the following:

His tongue is somewhat furred, abdomen slightly swollen, with some tenderness on pressure over transverse colon. No tympanitis; is well nourished, and in our opinion is now receiving a very liberal rate of pension.

The testimony tends very strongly to the establishment of the fact that the claimant's present condition is that of total inability to perform most kinds of manual labor, but your committee cannot conclude that the decision of the Pension Office is wrong, or that it ought to be revised. And therefore your committee recommend that the bill do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 700.

# IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1581.]

*The Committee on Pensions, to whom was referred the bill granting a pension to Anna R. Voorhies, having examined the same, make the following report:*

That Capt. Philip F. Voorhies, the husband of Mrs. Anna R. Voorhies, was appointed midshipman in the United States Navy November 15, 1809, was ordered to the frigate United States February 7, 1810, and was attached to that vessel under Commodore Decatur when she engaged and captured the British frigate Macedonian, October 25, 1812. He was in other engagements with British ships during the war of 1812. While acting as midshipman, a service which extended from 1809 till 1814, it appears, from the naval records, that he ruptured a blood-vessel, but the extent of the injury thereby resulting is not shown. On the 9th December, 1814, he was promoted to a lieutenant, served on various vessels of war, and received special mention and commendation at the hands of his superior officer, Commodore Warrington. He was promoted to the grade of master-commandant on the 24th April, 1828, and to the rank of captain on the 28th February, 1838. The records show that on 29th September, 1845, he was reprimanded and suspended from command for five years for (alleged) "illegal punishments and disobedience of orders." This reprimand and suspension appears to have been unjust, and in January, 1847, was removed, and Captain Voorhies honorably returned to the service. In 1849 he was ordered to the command of the Savannah, and on arrival in China was directed to assume command of the East India squadron. While in command of this East India squadron the fleet-surgeon, Dr. Barry, recommended the return home of Captain Voorhies on account of "an aggravated attack of prolapsus ani." In February, 1851, he returned from command, and was not after that date at sea. In September, 1855, he was placed on the retired list on furlough pay. In December, 1858, he was transferred from furlough to leave pay. Captain Voorhies died at Annapolis, Md., on the 26th February, 1862, of congestion of the lungs, in the seventy-third year of his age. His total term of service covered a period of fifty-two years and four months, divided as follows: Total sea service, twenty-one years and five months; total shore duty, three years and six months; unemployed, twenty-seven years and five months.

On the 28th November, 1862, Mrs. Anna R. Voorhies, the widow of

Captain Voorhies, filed her application for pension, alleging, as the basis of her claim, "that her husband's death occurred by reason of disease and infirm health contracted in the line of his duty before and in the year 1850, while commanding the United States squadron on the East India station." The Surgeon-General of the Navy, in reply to a request from the Pension Bureau for his official opinion as to the origin of the disease of which Captain Voorhies died, after referring to the facts disclosed by the records, states, under date of January 13, 1863, that he could not, "upon this exhibit of facts, say that the disease of which Commodore Voorhies died originated in the line of duty." From the date of his retirement from active service till his death the condition of Captain Voorhies' health is not shown. Three physicians (one of them the family physician), who attended him in his last sickness, make the following certificate:

ANNAPOLIS, *March* 23, 1870.

The undersigned hereby certify that Captain Voorhies, late of the United States Navy, died of congestion of the lungs with hemorrhage; that he had had several similar previous attacks, and that, in our opinion, his state of health, of which these were a consequence, has relation, in all probability, to his duties as an officer of the Navy.

This is the nearest approach to anything like expert or other testimony tending to connect Captain Voorhies' fatal sickness with his service in the Navy. It is, however, too vague and indefinite to be entitled to much weight in establishing that fact. In the opinion of these physicians the state of his health, of which his fatal attack was a consequence, had, in all probability, some relation to his duties as a naval officer, but what his state of health was and what relation it had to his previous service in the Navy is not given. The evidence failing to show that Captain Voorhies' fatal disease was contracted in the service or in line of duty, the widow's application for pension was finally rejected December 15, 1880. Relief is now sought from Congress, and the present bill proposes to place the widow on the pension-roll and pay her a pension of $50 per month from and after the passage of the act. There is nothing in the testimony on file to connect, in any satisfactory way, the disease of which Captain Voorhies died with his service in the Navy, nor is there, in the opinion of your committee, any error in the ruling of the Commissioner on the claim. The special circumstances in the case are the *partial* dependence of the claimant on others for support, and the long and honorable connection of her husband with the naval service of the country. But when it is considered that for more than half of this period he was unemployed, and for all or the greater portion of that time was receiving furlough or retired pay, and that he died at an advanced age, nearly twelve years after retirement from active service, your committee do not think that the case is so exceptional in its circumstances as to justify special relief, which would establish a precedent for granting pensions in many cases of long and meritorious service.

Your committee therefore recommend that the bill be not passed, but that the same be indefinitely postponed by the Senate.

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47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 701.

# IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

Mr. HAMPTON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1403.]

*The Committee on Military Affairs, to whom was referred the bill* (S. 1403) *for the relief of George W. Graffam, beg to report:*

That they referred this case to the Adjutant-General, and they transmit his answer herewith. In accordance with the views he expressed the committee report the bill back adversely, and recommend its indefinite postponement.

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ADJUTANT-GENERAL'S OFFICE, *May* 1, 1882.

SIR: I have the honor to return herewith Senate bill 1403 "for the relief of George W. Graffam," which was referred to the department by Hon. Wade Hampton, of the Senate Committee on Military Affairs, for information in the case, &c.

The bill authorizes the President to "reinstate George W. Graffam, late a first lieutenant in the United States Army," &c., and provides for his assignment to the first vacancy of his grade occurring in the infantry arm.

A statement of the military service of Lieutenant Graffam is inclosed, from which it will be seen that he formerly held the rank of first lieutenant, dating from November 24, 1865. The language of the bill would seem to contemplate his reinstatement as first lieutenant with that date of rank. If he should be so reinstated he would stand No. 5 for lineal rank in the list of first lieutenants of infantry, and would be the senior first lieutenant in any one of the infantry regiments except the Third.

The act of March 3, 1869, directed the Secretary of War to consolidate the 45 regiments of infantry to form 25. The consolidation was effected under General Orders Nos. 16 and 17, dated March 11 and 15, 1869, respectively, from headquarters of the Army, copies herewith. Under these orders the "senior company officers present and fit for duty," became the company officers of the new regiments formed by the consolidation, and the officers who were absent from their regiments (on detached service, leave of absence, &c.) *more than thirty days* were not to be assigned, but were to be placed on the list of supernumeraries awaiting orders. It appears that Lieutenant Graffam left his regiment on twenty days leave March 25, 1869, which leave was subsequently extended thirty days. A copy of his letter requesting the extension and giving the reason therefor, and copy of a letter from this office of April 16, 1869, authorizing him to await orders, after the expiration of his leave, are herewith. He was, however, on the expiration of his leave assigned to duty as Indian agent. Being thus absent when the regiment to which he belonged was consolidated with another, Lieutenant Graffam was left out in the assignment of officers to the new regiment. He is reported on the regimental returns as "unassigned at his own request," and was accordingly so noted on the records of this office. Whether he requested in specific terms to be left out in the assignment, or whether he was regarded by the regimental commander as desiring to remain unassigned because he did not return within thirty days and ask at the time to be assigned, does not appear of record in this office. On the 10th of May the following year, however, he did express his desire for an assignment to some regiment. A copy of his letter making this request is herewith. He was never assigned to a vacancy, and, remaining a supernumerary officer, he was honorably mustered out January 1, 1871, with a year's pay, under section 12, act of July 15, 1870. He has been out of service over twelve years, and it would seem unjust to put him back in the Army with his former rank and date of

commission over the heads of officers who have rendered continuous service during all this period.

A large number of officers were necessarily discharged under the operation of the laws of 1869 and 1870, reducing the Army, and many of them were deprived of their commissions under circumstances of extreme hardship. The circumstances under which Lieutenant Graffam was placed on the supernumerary list and finally mustered out hardly seem to be of such an exceptional character as to give him claims for reinstatement which could not with the same justice be urged by other equally meritorious officers who were compelled against their wishes to leave the Army.

Very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General.*

The honorable SECRETARY OF WAR.

ITH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 702.

# IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1912.]

*e Committee on Pensions, to whom was referred the bill (S. 1912) granting a pension to Amos C. Weeden, have carefully examined the same and eport:*

'hat the Commissioner of Pensions, in a communication bearing date y 26, 1882, states that the claim of Amos C. Weeden is still pending he Pension Office, and awaits the receipt of testimony called for on 24th of April, 1882.

Your committee therefore recommend that the bill (S. 1912) be initely postponed.

[ CONGRESS, ) SENATE. { REPORT
t Session. ) { No. 703.

# IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5684.]

*Committee on Pensions, to whom was referred the bill (H. R. 5684) ranting a pension to Newton Boutwell, submit the following report:*

lat the facts are as stated in the House report, which is hereto xed.

[House Report No. 948, 47th Congress, 1st session.]

*'ommittee on Invalid Pensions, to whom was referred the bill (H. R. 3127) granting a pension to Newton Boutwell, submit the following report:*

s committee have considered House bill No. 3127 and find the following facts:
lt the claimant, Newton Boutwell, who resides in Morrisville, in the State of ont, now seventy-four years of age, contributed to the Union forces in the late war four sons, viz, Thomas N. Boutwell and Robert T. Boutwell, both of Com- D, Fourth Regiment of Vermont Volunteers; Rodney M. Boutwell, of Company eventh Regiment Vermont Volunteers; and William C. Boutwell, of the Six- h New Hampshire Regiment.
lt the son, Thomas N. Boutwell, died of disease contracted in the service soon the close of the war, and after his return from the Army to Vermont.
lt Robert T. was wounded in the battle of the Wilderness, and died while a limb eing amputated.
lt Rodney M. was also wounded in the battle of the Wilderness, and died soon from effects of wound.
lt William C. died in hospital near Baton Rouge, La., of disease contracted in rvice.
lt at the time of the enlistment of these boys the said Newton Boutwell was the ssor of considerable property, but was involved pecuniarily and did not call him- orth more than about $1,000, which, on account of failing health and adverse nstances, he has since wholly lost and is now absolutely destitute, his property g been swept away by a mortgage upon it at the time of the enlistment of his ons. That the mother of these boys died when the youngest, Rodney M., was ; ten years old. That while in the service the said Rodney M. sent his father, aid Newton Boutwell, a portion of his pay, he at that time being under twenty- ears of age; and that the father, in his mind, had selected this as the son who d remain at home with him and take care of him in his old age.
e fact that at the time of the enlistment and service of these boys the said New- outwell was in comfortable health and could earn a livelihood, coupled with the hat at that time he had some property, prevents him from obtaining a pension existing laws. But your committee, in view of the fact of the loss in the serv- his four only sons, and of his present complete destitution, and the fact that the Rodney M. did contribute to the support of his father while in the service, are elled to look upon this as a case in which Congress may well exercise the power l it possesses and grant a pension to this applicant.
committee recommend the passage of the accompanying substitute bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 704.

# IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

Mr. MICHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1273.]

*The Committee on Pensions, to whom was referred the bill* (S. 1273) *granting a pension to Emma O. Zeigler, having considered the same, report as follows:*

That the Commissioner of Pensions informs your committee that the case remains in his office unadjudged, and that it is in the hands of a special examining division for investigation to determine its merits.

Your committee, in view of these facts, recommend that the bill be indefinitely postponed.

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ONGRESS, } SENATE. { REPORT
Session. } { No. 705.

IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

TCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill 957.]

*mmittee on Pensions, to whom was referred the bill (S 957) granting sion to George W. Teter, late a private in Company D, Tenth Reg-t, West Virginia Volunteers, having carefully examined the same, the following report:*

the Commissioner of Pensions informs your committee that the the said George W. Teter is still pending in his office, waiting evidence, which has been called for.

committee therefore recommend that Senate bill 957 be indefi-postponed.

ONGRESS, } SENATE. { REPORT
Session. } { No. 706.

IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

OOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2872.]

*nmittee on Pensions, to whom was referred the bill (H. R. 2872) to se the pension of James Hawthorne, have considered the same, and t:*

James Hawthorne, late a private in Company H, of the Twen-giment of Indiana Volunteers, was wounded in one of his thighs, account thereof is pensioned at the rate of $8 per month. He e applied to the Pension Office for an increase, and each time lication was rejected. The condition of the pensioner is conclu-stablished by all the evidence to be one of total helplessness, from complete paralysis of the lower limbs. The claims for an have been rejected upon the ground that the paralysis is not lt of the wound, but instead the result of lead poison, the pen-aving been a painter by trade.

Hawthorne was, when enlisted, a farmer, but had been a painter e. He was discharged on November 4, 1862, upon a surgeon's te, for disability, caused by a gunshot wound of the right thigh, g the use of the limb, and then estimated at one-half. He has en nine times examined by boards of examining surgeons or by urgeons. Two of the nine examinations were made on May 10, nd August 26, 1869, respectively. The first of these is not but the handwriting shows that they were both made by the amining surgeon. In the certificate of his first examination the says:

> Hawthorne is a painter by occupation. * * * He has had lead colic.

t of his second he says—

> a painter by trade, the greater part of the disability may be attributed to oning.

one of the seven other certificates of examination is there any nt that there is anything to indicate lead poisoning; but, on the , several of those last had, expressly state that his disability origi-ntirely from the injury for which he was originally pensioned. hese certificates says he should have a larger pension; another ends that he receive total third grade, or $24 a month; another, onth, and another, $8 a month for the wound and $40 a month paralysis.

roof is that the paralysis is confined entirely to the lower limbs, s not being at all affected. His family physician has filed with

your committee an affidavit stating that he has been such for fifteen years, and has a perfect knowledge of his case from personal examination. He states that before the wound there was no paralysis nor indication of it, but that after the wound paralysis commenced in the wounded leg and gradually extended to the other. He further states that in lead poisoning the usual symptoms are lead or painter's colic, paralysis of the forearm, called "drop wrist," a blue line on the gums near the teeth, a dirty incrustation of the teeth and a tendency in them to decay, obstinate constipation of the bowels, a sweet or metallic taste in the mouth, and a pale, sallow, or yellow tint of countenance, accompanied by emaciation; and that repeated examinations, using all the means known to medical science for the detection of lead poisoning, have failed to reveal any of these symptoms or a trace of its presence in James Hawthorne, and that everything, aside from the paralysis in question, indicates a healthy condition of his system. He further states that quite a number of physicians, who are eminent in their profession, have examined Mr. Hawthorne, and all concur in the opinion he states.

Dr. R. N. Todd, of Indianapolis, also testifies that he has examined Mr. Hawthorne, and that he is suffering from paralysis of the lower extremities, for which he (the doctor) can find no other cause than the gunshot wound received in the service.

The examining surgeon on the part of the State of Indiana, where Mr. Hawthorne resides, has filed an affidavit with your committee, in which he says that after a thorough examination of Mr. Hawthorne he found he had paralysis of the lower extremities, resulting from a gunshot wound of the right thigh, and that he was and is absolutely unable to dress and undress himself, and requires the attention of another person; and that he has suggested that a pension of $50 a month be allowed him; and that he frankly says that great injustice has been done Mr Hawthorne in not increasing his pension to that amount.

Your committee are of the opinion that where the propriety of granting or increasing a pension depends upon a question of medical science, they ought not to disregard the decision of the medical referee of the Pension Bureau thereupon, unless the preponderance of evidence that he has committed an error of judgment is in their opinion very conclusive. But in this case they are of opinion that the evidence produced on behalf of Mr. Hawthorne is sufficient to establish the fact that he is entitled to have his pension increased to $50 a month from and after the passage of the act for his relief.

The form of the bill referred to your committee is unusual, and whether so understood or not by the House of Representatives when it passed that body, might, if it became a law, be construed as entitling Mr. Hawthorne to arrears of the monthly rate fixed by the bill.

You committee therefore recommend that it be amended by striking out all after the enacting clause and inserting in lieu thereof "That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll, subject to the provisions and limitations of the pension laws, the name of James Hawthorne, late a private in Company H, Twentieth Regiment Indiana Volunteer Infantry, and pay him a pension from and after the passage of this act, at the rate of fifty dollars a month, in lieu of his present pension," and, as so amended, they recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 707.

IN THE SENATE OF THE UNITED STATES.

JUNE 6, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1451.]

The Committee on Pensions, to whom was referred the bill (H. R. 1451) granting a pension to Thomas W. Rothrock, have carefully considered the same, and recommend that the bill do pass.

The facts are as stated in a report of the Committee on Invalid Pensions to the House of Representatives, Forty-sixth Congress, and again made by the same committee in the present Congress. That report is as follows:

We find from an examination of the petition and of papers on file in the original claim at the Pension Office that the petitioner was a bugler of Company G, Eighth Pennsylvania Cavalry; that he enlisted September 3, 1861, and was discharged January 27, 1863; that he filed his application for pension May 7, 1870, and that the case was finally rejected by the Pension Office December 27, 1879.

The petitioner, in his declaration of pension, alleges a rupture on the right side, received the latter part of September, 1862, by being thrown on the pommel of his saddle on the march to Snicker's Gap, Va.

The testimony presented in the case shows, by his family physician, that the petitioner was free from hernia at the time of his enlistment. The evidence of two comrades is, that while in the line of duty and on the march aforesaid, the petitioner was ruptured; that they had personal knowledge of the injury; saw it occur while the petitioner was jumping his horse over a ditch; that they helped him off his horse and found the disability. Another comrade testifies to the same facts, and further that he took charge of the petitioner's horse and led him to the captain's quarters. The captain of the company testifies that about the time the petitioner alleges he received the injury he was reported to him as having been injured, and that he was unable to ride his horse; that he ordered him sent to hospital; that at the time the petitioner entered the service and up to the time he was disabled he was apparently sound and certainly free from hernia. The captain further states that he firmly believes the disability was contracted in the service.

The petitioner also swears that he received no treatment while in the Army, nor did any surgeon examine his rupture.

His family physician states that upon his return home he found him laboring with an irreducible hernia. Two neighbors and associates state that they knew the petitioner from his boyhood up; that they were members of a brass band with him; bathed with him, dressing and undressing in each other's presence; that they know positively that up to the time he enlisted the petitioner was free from hernia or any other disability.

The records of the Adjutant-General's Office show by the rolls for September and October, 1862, that the petitioner was on duty service at camp near Knoxville, Md.; November and December, 1862, and January and February, 1863, he was sick in hospital at Washington. He was discharged for disability January 27, 1863. It further states, "Upon re-examination this man is reported on the monthly roll of Company G as absent in hospital; place and date cannot be determined. Company return for August, 1862, does not show him absent. Company morning reports from August to December, 1862, furnish no information."

The certificate of disability gives as the ground of his discharge, "total loss of teeth, preventing him from blowing his bugle."

Two boards of examining surgeons of the Pension Office, one at Philadelphia and one at this city, find the petitioner ruptured with hernia, the last-named board rating him at $8 per month. The ground of rejection by the Pension Office is that the records do not show him present with his company at the time he alleges he was disabled. The records do show him on detached duty at camp within 25 or 30 miles of the place where he alleges he received the injury. As the company rolls cover a period of two months at the time, and as the petitioner's company was ordered out on a quick march, it is fair to presume that his services as bugler being needed, he joined his company and was present, as he alleges, at Snickersville, Va., notwithstanding the fact that the record does not show it.

Your committee is impressed with this idea, in view of the fact that three comrades, whose veracity is unquestioned and whose presence is verified, swear positively that he was present as alleged and that he was injured as alleged. We are of the belief that the discrepancy existing between the records and the sworn testimony of three comrades and a commissioned officer should not militate against the petitioner's right to a pension. From the evidence before us we are satisfied that he is a worthy subject and entitled to the benefits of the provisions of the pension laws, notwithstanding the technical objection of the Pension Office.

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47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 708.

# IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill H. R. 327.]

*The Committee on Claims, to whom was referred the bill (H. R. 327) for the relief of John W. Humphrey, have examined the same, and report thereon as follows:*

This bill passed the House of Representatives on the 20th day of March, 1882. It was reported favorably from the Committee on War Claims, by Mr. Updegraff, of Iowa. The following is a copy of said report, viz:

*The Committee on War Claims, to whom was referred the bill (H. R. 327) for the relief of John W. Humphrey, report as follows:*

This claim is for—

| | |
|---|---|
| Use of teams from October 1, 1861, to January 2, 1862 | $149 00 |
| Board of 42 recruits to January 2, 1862, in Fillmore County, Minnesota, Howard and Winneshiek Counties, Iowa, and on the way to the city of Dubuque | 715 00 |
| Six teams transporting said recruits from New Oregon (New Cresco), Calmar, and Monoma to Dubuque—162 miles | 396 00 |
| | 1,260 00 |

Which amount the claimant avers he paid in cash as above from his private purse. By the affidavit of claimant and of two other witnesses it appears that the services were rendered, and 41 recruits turned over to Captain Washington, recruiting officer of the regular Army at Dubuque; that bills were presented to Captain Washington, and that he declared himself at that time short of funds, agreed that the account was correct, that $1,260 was due, and that he would pay the amount as soon as he could draw funds from the War Department.

These statements are more or less strongly corroborated by Hon. Aaron Kimball, late senator, now residing at Cresco; Capt. J. Simpson, now internal revenue collector at Dubuque; Hon. J. H. Brown, late representative from Harvard County in general assembly, Iowa, and by other prominent men in the portion of Iowa wherein the services were rendered.

The claim was examined and believed to be correct by Hon. T. W. Burdick, late representative in Congress from third Iowa district, and who resides near and has known claimant well for a great number of years.

On application for information to Hon. William B. Allison, United States Senator, he states, under date of February 21, 1882, that about the time of the rendition of the service he was aid on the staff of Governor Kirkwood, attending to the collection of recruits for the volunteer forces at Dubuque. That the claimant had from time to time brought him many recruits and thus became acquainted with Captain Washington, who also employed claimant in the same capacity for the regular Army. That at the time the 41 recruits mentioned in the bill were brought to Dubuque, Captain Washington was short of money and that the claimant consulted him (Colonel Allison), and

that he advised claimant to receipt the bills, leave them with the captain, an the arrival of funds; that claimant did so. That Captain Washington was su ordered to the front, and in a few weeks after was killed in battle; that his including these receipted bills, have never been found. Colonel Allison be member of Congress in 1862 or 1863, and since that time has been almost cont a member of one House or the other. He states that during this period the cl has from time to time repeatedly applied to him to aid in collecting this claim. he has repeatedly endeavored to secure its payment, through the departmer without success.

Senator Allison has believed, and, it seems, correctly, that the Court of Claim had power to adjudicate it; and it seems no other tribunal had. In the abs returns from Captain Washington it was thought impossible for any accoun auditing officer to adjust and settle the claim. The claimant says that fo years he had a hope that in some way Captain Washington's papers and a would turn up, but they have not.

Your committee believe the claim sufficiently sustained, and report the bill l the House with the recommendation that it pass.

Your committee adopt said report, and recommend that the l pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 709.

IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

Mr. FAIR, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1280.]

*The Committee on Claims, to whom was referred the bill* (S. 1280) *for the relief of Capt. Nicolas J. Bigley, has had the same under consideration, and submit the following report:*

It appears from the evidence in this case that, in the winter of 1862 and 1863, about 45,000 troops were stationed at Memphis, Tenn., under the command of General Hurlburt, and that there was a great scarcity of and demand for coal, with which to move the immense quantities of supply stores that were required to supply the Army of the Tennessee, and in order to supply this demand Capt. A. R. Eddy, post-quartermaster at Memphis, sent the following telegram to one E. S. Blasdel:

DEPOT QUARTERMASTER'S OFFICE,
*Memphis, January* 24, 1863.

E. S. BLASDEL, Esq.:

Furnish to this depot from (75,000) seventy-five thousand to one hundred thousand (100,000) bushels of Youghiogheny coal, also (2,000) two thousand tons of hay, for which a good market price will be paid.

Coal at 30 cents per bushel.

Hay at 27½ dollars per ton.

A. R. EDDY.
Per DAN. W. SENBER,
*Chief Clerk.*

Upon the receipt of this telegram Mr. Blasdel immediately transferred the order to the claimant, N. J. Bigley, who was then furnishing large quantities of Youghiogheny coal to the government at other points, who accepted the order and at once undertook to fiill it. He had seven barges gauged by the proper officers, and forwarded his certificates to the post quartermaster at Memphis and notified him that he was *en route* with the coal, the seven barges being towed by the tow-boat Hercules to Memphis, reaching that point on the morning of February 17, 1863.

On reaching Memphis, claimant notified General McPherson, then in command, that he had delivered the coal as per contract, but owing to the crowded condition of the wharfs he was directed to land his tow-boat and barges on the opposite (Arkansas) shore, which order he obeyed. Claimant states that he was advised that a guard was detailed to protect the boat and coal, but they never reported for duty. Soon after the boat landed it was attacked by the querrillas and burned, and four

of the barges and their contents were sunk. The other three were paid for by the depot quartermaster at the contract price and according to the certificates of the gauger, which had been previously forwarded to him. Claimant presented his bill to the depot quartermaster for the other four barges and contents and for the value of his towboat, which had been destroyed by the neglect of the agents of the government, but payment was refused because of a want of jurisdiction of the depot quartermaster over such claims. The claim was afterwards presented to the Quartermaster-General of the United States Army for allowance and payment, and was by him rejected for the same reason, but was by him recommended to the favorable consideration and action of Congress.

Claimant now comes to Congress and asks compensation for the coal contained in the four barges that were sunk, at the contract price, and for the amounts as shown by the gauger's certificates, and for the loss of the towboat Hercules, at a price fully shown by the testimony to have been a fair and reasonable valuation. The items may be more definitely expressed as follows:

| | |
|---|---|
| 70,633 bushels of coal, at 30 cents | $21,211 40 |
| To the value of towboat Hercules | 25,000 00 |
| | 46,211 40 |

The evidence shows conclusively that the claimant was acting under the direct and positive orders of the agent of the government, and that the loss of the property above mentioned was in no way chargeable to his neglect or carelessness; that the claimant had always been loyal to the government, and had given liberally of his own private means to aid the government in its days of sore trial and dire necessity. This claim has been considered by the Quartermaster-General, the Judge-Advocate-General, the Third Auditor, and the Second Comptroller, respectively, and by them rejected for the reason that the property "was destroyed while it was in the possession of the claimant." Your committee cannot see that this should be a bar to the claimant's right to recovery, as he was acting under the special and positive orders of the government through its recognized agents. This opinion seems to have been shown by Quartermaster-General Meigs, who, in the conclusion of his decision rejecting the claim, under date of May 11, 1869, uses these words:

> Congress alone, it seems to me, can give relief. The loss was a heavy one, and the circumstances are such as, I think, should commend the case to the favorable consideration of Congress.

In reviewing the report of the Quartermaster-General on this case, the Inspector-General, Hardie, uses these words:

> The views of the Quartermaster-General are concurred in by the undersigned. The loss was heavy, and the circumstances such as entitle the claimant to such favorable consideration as can legally be granted.

Judge-Advocate-General W. M. Dunn concludes his final review of the entire case, under date November 22, 1870, with these words:

> I concur in the conclusions of the reports rejecting this claim, and also in the foregoing recommendations thereof to the favorable consideration of Congress.

There is every reason to believe that while these departmental officials could not legally allow the said claim, yet they fully recognized and candidly acknowledged its justice.

Your committee are of opinion that the claimant is entitled to the relief he seeks to the extent of the value of the coal.

Your committee are of opinion that claimant should not receive pay-

ment from the government for the towboat Hercules, by which said coal was transported, for the reason that it was a lossincident to natural risks which he assumed in delivering the coal, and for the further reason that the boat formed no part of the goods contracted for by the government to be delivered; but your committee are clearly of opinion that claimant is entitled to recover the value of the coal destroyed, at the contract price of 30 cents per bushel, amounting to $21,211.40, and accordingly report back said bill with this amendment, and recommend its passage.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 710.

# IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 267.]

*The Committee on Claims, to whom was referred the bill (S. 267) for the relief of those suffering from the destruction of the salt-works near Manchester, Ky., pursuant to the orders of Major-General Carlos Buell, having had the same under consideration, beg leave to submit the following report:*

The damage and injury to the property of the claimants for which they pray compensation was not done wantonly or accidentally, but designedly and pursuant to the order of General Buell, who was the military commander of the territory in which the property destroyed was situate.

The question to be considered is, "whether the government is liable to make compensation for the property of a citizen in an adhering State seized and destroyed or damaged by competent military authority, *flagrante bello*, to prevent it from falling into the hands of the enemy, as an element of strength where warlike operations are in progress, or where the approach of the enemy is prospectively imminent."

We are of the opinion that the same law prevails when our territory is invaded by a foreign enemy or a loyal State by a rebel invading force.

We submit that the government has a clear right to take or use private proverty under its war power on the theater of military operations, *flagrante bello*, for military purposes.

It has never been claimed that the government is bound to pay for property taken or destroyed by the enemy in time of war, nor by its own military forces in actual battle.

The property for which these claimants ask compensation was destroyed to prevent it from falling into the hands of the enemy; it was situate in a territory where *actual* war prevailed; it was the owners' misfortune and not the fault of the government that it was so situate. *The government ought not to be held liable to make compensation except where it is in the wrong.*

Everybody agrees that the government is not liable for property destroyed in battle, or in an attempt to recapture it from the enemy.

It can make no difference to the owner whether his property is destroyed immediately before a battle or during the actual conflict.

The government ought not to be held liable to make compensation for property destroyed by it to keep it from falling into the hands of an

enemy, because it is not possible to say what is the measure of damages. Can any person tell what property is worth which is liable the next day or the next hour to be taken or destroyed by the enemy?

It has been said that compensation ought to be made because the property was "taken for the public use." The property was not taken at all; it was destroyed, and it was taken under those powers which every nation possesses, whether it has a written constitution or not—*its war powers.*

The practice and usage of government during and since the late civil war is a denial of liability for this class of claims.

Congress has, by general law, provided for the payment of quartermaster's and commissary supplies, but has prohibited the Court of Claims from taking jurisdiction of any case against the government growing out of the destruction of or damage to property by the Army or Navy engaged in the suppression of the rebellion.

This rule of law was recognized by the President in this very case. In his message vetoing the bill for the relief of these claimants he uses the following language, to wit:

> All the objections made by me to the bill for the relief of J. Milton Best, and also of the East Tennessee University, apply with equal force to this bill.
>
> According to the official report of Brigadier-General Craft, by whose immediate command the property in question was destroyed, there was a large rebel force in the neighborhood who were using the salt-works, and had carried away a considerable quantity of salt, and were preparing to take more as soon as the necessary transportation could be procured; and he further states "that the leaders of the rebellion calculated upon their supply of salt to come from these works," and that, in his opinion, their destruction was a military necessity. I understand him to say, in effect, that the salt-works were captured from the rebels, that it was impracticable to hold them, and that they were demolished so as to be of no further use to the enemy.
>
> I cannot agree that the owners of property destroyed under such circumstances are entitled to compensation therefor from the United States. Whatever other view may be taken of the subject, it is incontrovertible that these salt-works were destroyed by the Union Army while engaged in regular military operations, and that the sole object of their destruction was to weaken, cripple, or defeat the armies of the so-called Southern Confederacy.
>
> I am greatly apprehensive that the allowance of this claim could and would be construed into the recognition of a principle binding the United States to pay for all property which their military forces destroyed in the late war for the Union. No liability by the government to pay for property destroyed by the Union forces in conducting a battle or siege has yet been claimed; but the precedent proposed by this bill leads directly and strongly in that direction; for it is difficult upon any ground of reason or justice to distinguish between a case of that kind and the one under consideration. Had General Craft and his command destroyed the salt-works by shelling out the enemy found in their actual occupancy, the case would have not been different in principle from the one presented in this bill. What possible difference can it make in the rights of owners or the obligations of the government whether the destruction was in driving the enemy out, or in keeping them out, of the possession of the salt-works?
>
> This bill does not present a case where private property is taken for public use, in any sense of the Constitution. It was not taken from the owners but from the enemy; and it was not then used by the government, but destroyed. Its destruction was one of the casualties of war; and though not happening in actual conflict, was perhaps as disastrous to the rebels as would have been a victory in battle.
>
> Owners of property destroyed to prevent the spread of a conflagration, as a general rule, are not entitled to compensation therefor; and for reasons equally strong the necessary destruction of property found in the hands of the public enemy, and constituting a part of their military supplies, does not entitle the owner to indemnity from the government for damages to him in that way.

We recommend that the claim be not allowed, and that the bill be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 711.

## IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

Mr. JONAS, from the Committee on Railroads, submitted the following

# REPORT:

*The Committee on Railroads, to whom the subject was referred, submit the following report:*

A petition has been referred to the Committee on Railroads of certain citizens of Louisiana, asking for the forfeiture of the land grant made to the New Orleans, Vicksburg and Baton Rouge Railroad Company by the ninth section of the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, on the ground that the company to whom the grant was made has failed to build the road within the time prescribed by the act.

The grant was made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and *assigns*. That company was incorporated by an act of the legislature of Louisiana, approved December 30, 1869. The object of Congress in making the grant was to aid in the construction of the proposed road from New Orleans, via Baton Rouge, Alexandria, and Shreveport, to connect with the eastern terminus of the Texas Pacific Railroad, and thus connect that road with the Mississippi River and the Gulf of Mexico.

The committee find that this connecting road, on almost the same line, and between the same points (if not built by the original grantees), has been built by the New Orleans Pacific Railway Company, which was organized under a charter confirmed by an act of the legislature of Louisiana, approved February 19, 1876. This road is now completed and running between New Orleans and the eastern terminus of the Texas Pacific Railroad, at or near Marshall, Texas, its route being via Baton Rouge, Alexandria, and Shreveport.

The New Orleans, Baton Rouge and Vicksburg Railroad Company (which still has corporate existence), by deed dated the 5th day of January, 1881, granted and transferred to the New Orleans Pacific Railway Company all its right, title, and interest in and to the lands granted to it by the before-mentioned act of Congress incorporating the Texas Pacific Railroad Company. This transfer was approved, ratified, and confirmed at a meeting of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company, by a vote of two-thirds of its entire capital stock. The transfer was formally accepted by the board of directors of the New Orleans Pacific Railway Company.

The deed of transfer, a certified copy of the resolution of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company ratifying the transfer, and a certified copy of the resolution

of he board of directors of the New Orleans Pacific Railway Company accepting the transfer, have been filed in the Department of the Interior.

A commissioner to inspect a portion of the railroad built by the New Orleans Pacific Railway Company was, upon the application of that company, appointed by the President of the United States, and the report of the said commissioner, approving the construction of the portion of the railroad inspected by him, was duly filed in the Department of the Interior.

Application is now made for the issuance of patents to the New Orleans Pacific Railway Company for the lands granted by Congress to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and by the last named company assigned to the New Orleans Pacific Railway Company, as heretofore stated.

The grant was originally made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and *assigns*, for the purposes above stated.

The road has been built by the assignee of the grantee, and the objects of the grant have been fully attained.

No forfeiture of the grant was made before the completion of the road, on the grounds alleged, and we think it would be unjust and inequitable to make such forfeiture now when the work has been completed by the assignee company, which has built the road in good faith and in full expectation of receiving the benefit of the grant which remained unforfeited and assignable in the control of their grantor.

Your committee think no consideration of public policy requires the forfeiture of the grant, and they recommend that the committee be discharged from further consideration of the memorial.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 712.

# IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4444.]

*The Committee on Pensions, to whom was referred the bill H. R. 4444, having carefully considered the same, make the following report:*

The report of the House Committee on Invalid Pensions favoring the passage of this bill, is as follows:

*The Committee on Invalid Pensions, having had under consideration the bill (H. R. 3486) granting pensions to Wilson W. Brown and others, respectfully report as follows:*

The petitioners seeking to be benefited by this bill are known in history as the "Mitchell Raiders." In the early part of April, 1862, Gen. O. M. Mitchell had advanced his column as far south as Shelbyville, Tenn. On the west the battle of Shiloh had just determined in favor of the Union arms. At the east McClellan, with his Army of the Potomac, was at Yorktown, threatening an advance upon Richmond. Against these two armies of the West and the East the South had concentrated their strength. General Mitchell saw, then, as a bloody history so fully demonstrated subsequently, the vital importance of seizing and holding Chattanooga as a strategic point on the great railroad line between the east and west, which connected the main armies of the rebellion. The capture of Chattanooga, at that crisis of the war, involved also the possession of East Tennessee, and a probable uprising of a strong loyal element there. The Mitchell Raiders were a body of twenty-one men, under command of one J. J. Andrews, selected by General Mitchell to undertake the desperate enterprise of penetrating nearly two hundred miles south into the heart of the enemy's territory, and endeavoring to destroy the wooden bridges on the railroad between Chattanooga and Atlanta. This, Mitchell hoped, would cut off the advance of troops from the South, while he moved down his Army and captured Chattanooga. Judge-Advocate-General Joseph Holt did not exaggerate when he said of this expedition that ' in the daring of its conception it had the wildness of romance, while in the overwhelming results which it sought to accomplish it was absolutely sublime."

The account of the raid, following, is borrowed from another writer, and is correct, according to the evidence of participants:

"The soldiers of this forlorn hope, dressed in citizen's clothes and representing themselves as good Secessionists, set out on foot through the enemy's country by twos and threes, and, after many adventures, came together at Marietta, a point on the railroad a little north of Atlanta. The plan was to take passage on some north-bound train, and, at an opportune moment, overpower the guard, seize the engine, and drive onward with all speed, burning bridges and tearing up track as they went, and leaving a trail of flame and destruction behind them; to dash clean through Chattanooga, and meet Mitchell as he advanced along the Memphis road. It was early in the morning of April 12 when these adventurous travelers, with tickets for different points to avert suspicion, boarded the train, and finally seated themselves in the same car. At broad daylight the conductor called out: ' Big Shanty; twenty minutes for breakfast,' and at once passengers, engineer, and trainmen all poured into the long eating-room, leaving the engine unguarded, although it was within the lines of a rebel encampment.

"The little band sauntered forward, each falling into his appointed place, when in a twinkling, on a signal given, the passenger coaches were uncoupled, an engineer and

fireman of the party sprang into the cab, the valve was pulled open, and the engine, tender, and three cars moved off as the remaining adventurers leaped into the open doors of one of the box cars. A few minutes placed the exulting party beyond what seemed to be the danger of any successful pursuit, for there was no telegraph at Big Shanty, and no other engine at hand. But it was one day too late. General Mitchell had advanced to Huntsville, and his approach was so threatening that all the rolling stock about Chattanooga had been ordered south, and the delay caused by meeting these unscheduled trains was fatal. Andrews, representing himself as a Confederate officer of high rank, who had impressed the train for the purpose of running powder through to Beauregard at Corinth, excited no suspicion. But while he was losing precious minutes in waiting for the extra trains, and moving them off the track, the conductor at Big Shanty left his coffee and began the pursuit on foot until he reached a hand-car, and soon after, in a swift locomotive, which, by rare good fortune, had come down to the road, on a private track, from large iron-works just in the nick of time. Before the raiders found opportunity for any serious work their pursuers were upon them. A desperate chase ensued, until finally, after a run of nearly 100 miles, the captured locomotive, now jaded and shattered, was abandoned, and the captors scattered to the shelter of thick woods."

The whole party was captured after enduring the sufferings incident to fruitless efforts to escape their pursuit. It is unpleasant to recall the history of the treatment to which these prisoners were subjected. They were denounced as spies. They were chained together by twos by the neck, marched through the streets of Chattanooga amid the angry jeers of an infuriated crowd, and thrust into a kind of dungeon. This apartment was thirteen feet square and of about the same depth. Twenty-one men were confined here for nearly three weeks. Scanty provision was furnished and no sufficient means afforded for the removal of excrement. If we may credit the statements of survivors of the party, which are as given above, the horrors of this confinement are beyond description. When released from the dark and noisome hole their condition was pitiable, and for hours they were blinded by the light of day. Andrews, the leader, was hung as a spy. The party was removed then to Atlanta, where seven more were tried, convicted, and hanged as spies. One, Jacob Parrot, was whipped, one hundred lashes being inflicted on his back. For six months some of the survivors, and for eleven months others of them, were in constant apprehension of the same death by hanging as their comrades had suffered. It were better that the story of the sufferings and indignities inflicted on these heroic soldiers were left unrecited, as they were incredibly terrible, as told by the survivors.

In considering this case the committee think it very clear that this raid was a military expedition. Judges Baxter and Temple, who, it appears, acted as attorneys to defend the men who were hanged, have lately written that they considered that they clearly showed before the court-martial that the expedition was a military one under authority and command of General Mitchell, and that the men were not spies. It is evident that the Confederate Government so regarded the matter, as the further trial of the survivors was stopped after the execution of Andrews and seven of the party. These soldiers, therefore, who undertook and with marvelous energy essayed the task imposed by their commander, suffered an outrage in being treated as spies and worse, which justifies their appeal for consideration.

Jacob Parrot, one of the raiders, by special act of Congress approved March 3, 1879, had his pension increased to twenty dollars per month, as will be seen in the following statement from the records of the Pension Office:

"*Persons referred to in bill* 3486.

"Wilson W. Brown, pensioner, at $12 per month, for gunshot wound left knee and hand, received at Chickamauga, September 20, 1863.

"William Pittinger, pensioner, at $18 per month, for disease of lungs and liver, contracted while prisoner of war, captured April 15, 1862, on raid.

"Martin Hawkins, prisoner, at $8 per month, for scurvy and debility, contracted in prison at Chattanooga.

"Daniel A. Dorsey, pensioner (papers out of file).

"Jacob Parrott, pensioned under general laws, at $8 per month, for injury of back, caused by whipping, while prisoner of war; pension increased to $20 per month by special act, approved March 3, 1879.

"John R. Porter, claimant for pension on account of right hernia, contracted in March, 1865.

"William Bensinger, applicant for pension on account of bronchitis and piles, contracted while captain of Company C, Thirteenth United States Colored Infantry.

"John A. Wilson has not applied for pension under the general law.

"Elihu A. Mason, applicant for pension on account of scurvy and results, contracted while a prisoner of war at Atlanta.

"Rachel Slavens, widow of Samuel Slavens, pensioned under certificate 68,918; soldier was executed at Atlanta, Ga., June 18, 1862."

The committee report a substitute for the bill, which provides that the names of Wilson W. Brown, William Pittinger, Martin Hawkins, Daniel A. Dorsey, John R. Porter, William Bensinger, John A. Wilson, Elihu Mason, and Rachel Slavens shall be placed on the pension roll at $20 per month, and that this shall be in lieu of all pensions heretofore allowed or claimed to be due to any of said persons, and recommend its passage by the House.

The wisdom and necessity of the enterprise in which those claiming benefits under this bill were engaged, and the estimation of its importance by Judge Holt, have been criticised in military circles; and the conclusion of the foregoing report, that the expedition was a military one, and that the men were not spies, is open to question; but for the purpose of determining whether it is just or expedient for Congress to pass this bill, both the facts set forth in the report of the House committee, and its conclusions as to the character, importance, and the necessity of the expedition, may be assumed.

Upon such assumption, however, the committee are unable to find sufficient grounds for a report in favor of the passage of the bill, which proposes to grant to each of the survivors of the expedition, and the widow of one who is dead, a uniform pension of $20 per month without reference to the degree of their disability, a provision which is unknown to the existing law relating to pensions. The argument in favor of thus discriminating in favor of the beneficiaries in this bill against the soldiers who are pensioned by general act, seems to be based upon three considerations, viz, the brilliant services of these soldiers, their extreme suffering, and their imminent danger of death as spies.

In the opinion of the committee, neither of these considerations can justify the passage of the bill, giving to these men an arbitrary rate of pension, greater in amount than that allowed to other soldiers.

Pensions should be granted for disability, and should be proportioned to the disability sustained. It is believed that no other just basis for pensions to soldiers exists. The country gratefully recognizes the patriotism, the heroism, and the brilliant achievements of those who fought its battles, but in granting pensions we must not forget that hundreds of thousands, nay millions, of our volunteer soldiers were patriotic and heroic, and performed deeds of conspicuous courage and gallantry, nor must we forget that such service was due from the soldier in the defense and protection of his government, in return for the protection which the government afforded to the soldier as its citizen. To single out a few from the great body of those who performed patriotic, heroic, and brilliant services in the war, and bestow upon them special pensions therefor, is an unjust discrimination against those equally deserving of praise who pass unnoticed. Nor can such pensions be put upon the ground of extreme suffering, unless we propose in all instances to estimate in rating the pensions granted by Congress the physical and mental pain endured by the soldier from any and every cause incident to his service. A great number of soldiers other than these, suffered cruel hardships, and in imminent danger of death languished in hospitals and in prisons, and no reason exists why these few soldiers should be pensioned for such suffering while the many similarly situated are not pensioned.

To rate pensions according to the amount of suffering endured, either physical or mental, is manifestly impracticable, even if such causes were admitted to be just ground for pension. Nor does the fear of an ignominious death as a spy seem to the committee to furnish a basis for a pension any more than the fear of death consequent upon battle, or other

dangerous service. If it be said that the disability of soldiers who suffered such imprisonment and endured such hardships should be presumed to be the result of such imprisonment and hardships, such considerations would only justify the granting of pensions to the petitioners according to the disability which might be found, upon medical and other testimony, actually to exist, and not the establishing of a uniform rate of $20 per month for each. It is not to be presumed that each of these petitioners is equally disabled. It is possible that some of them may be entitled, under the existing provisions of the general law, to a higher rating even than $20 per month, while it is probable, to say the least, that some of them are not sufficiently disabled to justify such a rating. However that may be, the law provides an equal rule for all.

The Pension Office is liberal in the administration of the law, and if in particular instances the Commissioner of Pensions fails to rate a pension under the law according to the degree of disability, it will not be questioned that Congress is exceedingly liberal in granting increases in such cases. The committee do not believe it wise or expedient to single out particular soldiers, or particular classes of soldiers, and grant them pensions at greater rates than the pensions granted to others for similar disabilities. The petitioners were brave and patriotic; their bravery excites our admiration, and their suffering enlists our sympathy; and while a special compensation for such bravery and such suffering may at first sight seem an act of justice, it needs but a little reflection to see that it is an act of palpable injustice to the thousands of unnoticed and unrewarded soldiers whose bravery and sufferings equally compel our admiration and our sympathy. In view of these considerations, your committee recommend the indefinite postponement of the bill.

I CONGRESS, } SENATE. { REPORT 712,
st Session. } { Part 2.

IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

BLAIR, from the Committee on Pensions, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill H. R. 4444.]

ıe principal facts are stated in the House report as follows:

ɜ petitioners seeking to be benefited by this bill are known in history as the chell Raiders." In the early part of April, 1862, General O. M. Mitchell had ad-ɔd his column as far south as Shelbyville, Tenn. On the west the battle of Shiloh just determined in favor of the Union arms. At the east McClellan, with his of the Potomac, was at Yorktown, threatening an advance upon Richmond. nst these two armies of the West and the East the South had concentrated their gth. General Mitchell saw then, as a bloody history so fully demonstrated sub-ɔntly, the vital importance of seizing and holding Chattanooga as a strategic ; on the great railroad line between the east and the west, which connected the armies of the rebellion. The capture of Chattanooga, at that crisis of the war, ved also the possession of East Tennessee, and a probable uprising of a strong element there. The Mitchell Raiders were a body of twenty-one men, under ıand of one J. J. Andrews, selected by General Mitchell to undertake the des-ɜe enterprise of penetrating nearly two hundred miles south into the heart of the y's territory, and endeavoring to destroy the wooden bridges on the railroad een Chattanooga and Atlanta. This, Mitchell hoped, would cut off the advance ɔops from the south, while he moved down his army and captured Chattanaoga. e-Advocate-General Joseph Holt did not exaggerate when he said of this expedi-that "in the daring of its conception it had the wildness of romance, while in ɔverwhelming results which it sought to accomplish it was absolutely sublime." e account of the raid, following, is borrowed from another writer, and is correct, ding to the evidence of participants:

'he soldiers of this forlorn hope, dressed in citizen's clothes and representing selves as good secessionists, set out on foot through the enemy's country by twos ;hrees, and, after many adventures, came together at Marietta, a point on the ɔad a little north of Atlanta. The plan was to take passage on some north-bound , and, at an opportune moment, overpower the guard, seize the engine, and drive ɜrd with all speed, burning bridges and tearing up tracks as they went, and leav-trail of flame and destruction behind them; to dash clean through Chattanooga, neet Mitchell as he advanced along the Memphis road. It was early in the morn-f April 12 when these adventurous travelers, with tickets for different points to ; suspicion, boarded the train, and finally seated themselves in the same car. At l daylight the conductor called out: 'Big Shanty; twenty minutes for break-and at once passengers, engineer, and trainmen all poured into the long eating-, leaving the engine unguarded, although it was within the lines of a rebel en-ɔment.

'he little band sauntered forward, each falling into his appointed place, when in inkling, on a signal given, the passenger coaches were uncoupled, an engineer ireman of the party sprang into the cab, the valve was pulled open, and the en-tender, and three cars moved off as the remaining adventurers leaped into the doors of one of the box cars. A few minutes placed the exulting party beyond seemed to be the danger of any successful pursuit, for there was no telegraph at Shanty, and no other engine at hand. But it was one day too late. General hell had advanced to Huntsville, and his approach was so threatening that all olling stock about Chattanooga had been ordered south, and the delay caused

*

by meeting these unscheduled trains was fatal. Andrews, representing himself as a Confederate officer of high rank, who had impressed the train for the purpose of running powder through to Beauregard at Corinth, excited no suspicion. But while he was losing precious minutes in waiting for the extra trains, and moving them off the track, the conductor at Big Shanty left his coffee and began the pursuit on foot until he reached a hand-car, and soon after, in a swift locomotive, which, by rare good fortune, had come down to the road, on a private track, from large iron works just in the nick of time. Before the raiders found opportunity for any serious work their pursuers were upon them. A desperate chase ensued, until finally, after a run of nearly 100 miles, the captured locomotive, now jaded and shattered, was abandoned, and the captors scattered to the shelter of thick woods."

The whole party was captured after enduring the sufferings incident to fruitless efforts to escape their pursuit. It is unpleasant to recall the history of the treatment to which these prisoners were subjected. They were denounced as spies. They were chained together by twos by the neck, marched through the streets of Chattanooga amid the angry jeers of an infuriated crowd, and thrust into a kind of dungeon. This apartment was thirteen feet square and of about the same depth. Twenty-one men were confined here for nearly three weeks. Scanty provision was furnished and no sufficient means afforded for the removal of excrement. If we may credit the statements of survivors of the party, which are as given above, the horrors of this confinement were beyond description. When released from the dark and noisome hole their condition was pitiable, and for hours they were blinded by the light of day. Andrews, the leader, was hung as a spy. The party was removed then to Atlanta, where seven more were tried, convicted, and hanged as spies. One Jacob Parrot was whipped, one hundred lashes being inflicted on his back. For six months some of the survivors, and for eleven months others of them, were in constant apprehension of the same death by hanging as their comrades had suffered. It were better that the story of the sufferings and indignities inflicted on these heroic soldiers were left unrecited, as they were incredibly terrible, as told by the survivors.

In considering this case the committee think it very clear that this raid was a military expedition. Judges Baxter and Temple, who, it appears, acted as attorneys to defend the men who were hanged, have lately written that they considered that they clearly showed before the court-martial that the expedition was a military one under authority and command of General Mitchell, and that the men were not spies. It is evident that the Confederate Government so regarded the matter, as the further trial of the survivors was stopped after the execution of Andrews and seven of the party. These soldiers, therefore, who undertook and with marvelous energy essayed the task imposed by their commander, suffered an outrage in being treated as spies and worse, which justifies their appeal for consideration.

A careful examination of the testimony has satisfied the minority of the committee that disabilities were contracted by all the survivors for which they should receive pensions, and most of them are already receiving pensions under the general law, while others have applications pending, which, in our belief, should be granted.

It is unnecessary to dwell upon the details of the extraordinary enterprise in which these men engaged, the dangers they incurred, the sufferings they endured, their coolness, gallantry, fidelity, devotion, and patriotism, or upon its immense importance to the Union cause had it been successful. It is sufficient to say that these men dared and endured everything, and that failure was not their fault.

We recommend the passage of the bill.

H. W. BLAIR,
*For the Minority.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 713.

# IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

Mr. HALE, from the Select Committee on the Tenth Census, submitted the following

# REPORT:

*The Select Committee on the Tenth Census, instructed by the following Senate resolution, to wit:*

***Resolved***, That the Select Committee on the Census be instructed to inquire into the number and character of subjects being prepared for publication under the direction of the Census Bureau, and to report to the Senate as to the cost of preparing and printing them, and the probable time required before they will be ready for distribution, together with such information as the committee may think necessary to lay before the Senate—

*have investigated the subject-matters covered by said resolution, and report as follows:*

The committee, in addition to communications received from the office of the Public Printer, requested and secured the attendance of the Superintendent of the Census, Col. C. W. Seaton, and, after full examination, obtained facts, and information, and estimates covering the subject-matters of the resolution, which, at the request of the committee, have been embodied in the following communications, which the committee adopt as a part of their report:

DEPARTMENT OF THE INTERIOR, CENSUS OFFICE,
*Washington, D. C., April*, 1882.

SIR: I have the honor to be in receipt of your communication of the 21st instant, inclosing a copy of a resolution of the honorable Senate under the same date, and requesting certain information relative to the matter of said resolution.

In reply, I have the honor to state:

First. The plan framed by the late Superintendent for the publication of the reports of the tenth census comprised an aggregate bulk of 18,000 quarto pages.

When the great variety and importance of the subjects embraced in the reports of the recent census are considered, this plan does not seem to me excessive.

Should the necessity for retrenching the scheme of publication be deemed imperative, the reports could probably be cut down to 15,000 pages without mutilation. I should think, however, the result would be more satisfactory to Congress and to the country if the plan were to remain unaltered.

Second. Respecting the expense of publication, I would say that the cost of setting up and stereotyping 15,000 pages of the character proposed would be, taking the reports already printed of Messrs. Porter, Ingersoll and Swank as the measure of expense, between $95,000 and $100,000.

The cost of press-work, paper, and binding an edition of 10,000 copies of all the reports, would be about $195,000, taking the cost of printing Mr. Porter's volume on public indebtedness (667 pages) as the measure of expense. This would make the total cost of composition, stereotyping, printing, and binding an edition of 10,000 copies somewhere from $290,000 to $295,000. An additional 10,000 copies of all reports would bring the cost of 20,000 copies within $500,000. This estimate includes only the work of the Government Printing Office. The cost of the various illustrations of the several volumes would form the subject-matter of contracts to be made between

the Public Printer and the engravers. The majority of the maps proposed to be inserted in the reports are already engraved, and paid for out of the sum heretofore appropriated.

Third. If, instead of a uniform edition of 20,000 copies, some of the reports of a special or technical character were to be issued in editions of 3,000. 5,000, or 10,000 copies, as is the case with many government publications, such as the Geological Survey of the Fortieth Parallel, and the Medical and Surgical History of the War, this would allow larger editions of those reports which are of a more popular character, or which have a pecuniary interest for larger classes of persons, like the report on population or the reports on agriculture, without bringing the aggregate expense above the sum named.

Fourth. A. Limited preliminary editions of the following reports have already been issued for the use of the Census Office and of members of Congress, viz:

The report on population, volume I, 464 pages (LXXXIX and 375).

Special Agent Robert P. Porter's report on public indebtedness, 667 pages.

Special Agent Ingersoll's report on the oyster industry, 251 pages.

Special Agent Hilgard's report on cotton production in Louisiana, 99 pages.

Mr. H. W. Elliott's report on the Seal Islands of Alaska, 176 pages.

Special Agent King's report on the production of the precious metals, 94 pages.

Special Agent Swank's report on the statistics of iron and steel production, 180 pages.

Special Agent Waring's report on the social statistics of the cities of New Orleans and Austin, 99 pages.

Special Agent Robert P. Porter's report on the railroads of the New England group, 46 pages.

The foregoing statement of number of pages is exclusive of maps and full-page illustrations.

B. There are now in the Public Printing Office the following reports, which are wholly or partly in type:

Special Agent Swain's report on the water-power of the South Atlantic coast, 170 pages.

Special Agent Hutton's report on steam-pumps and pumping-engines, 57 pages.

Special Agent Wyckoff's report on statistics of the manufacture of silk, 30 pages.

Office report on the manufactures of the twenty largest cities of the United States, 32 pages.

The foregoing reports have been stereotyped and will be immediately printed.

Special Agent Fitch's report on manufactures of interchangeable mechanism, estimated 150 pages.

Special Agent North's report on newspapers and periodicals, estimated 400 pages.

Special Agent Brewer's report on the cereal crops of the United States, estimated 400 pages.

Special Agent Gordon's report on meat production in Texas, California, Nevada, Oregon, Washington, and Idaho, estimated 500 pages.

C. There are at present in the Printing Office, ready to be taken up when the type used in the foregoing reports shall be released, the following, viz:

Special Agent Neftel's report on flour-milling and milling machinery, estimated 20 pages.

Special Agent Greenleaf's report on the water-power of a portion of the Northwestern States, estimated 200 pages.

Special Agent Dwight Porter's report on the water-power of the Missouri River and its tributaries, estimated 250 pages.

Special Agent E. A. Smith's report on the cotton culture of Florida, estimated 75 pages.

Special Agent W. G. Elliott's report on the water supply of cities and towns, estimated 200 pages.

D. There are in the office, ready to be sent to press:

Special Agent Killebrew's report on the tobacco culture of the United States, estimated 400 pages.

Special Agents Loughridge and McKutchen's report on the cotton culture of Georgia, estimated 250 pages.

Special Agent Hollerith's report on steam and water power used in iron and steel manufacturing, 10 pages.

Special Agent Goode's report on the whale fisheries of the United States, estimated 200 pages.

Special Agent Hawes's report on the quarries of Ohio and Kentucky, 10 pages.

Special Agent Rowland's report on the chemical-manufacturing industry of the United States, estimated 50 pages.

Special Agent Waring's report on the social statistics of Boston, estimated 100 pages.

Special Agent Goode's report on the general fisheries of the United States, including the reports of numerous assistants, 1,800 pages.

Special Agent Robert P. Porter's report on State and municipal taxation and valuation, estimated 450 pages.

Special Agent R. P. Porter's report on the railroad statistics of the United States, exclusive of the New England group (mentioned above), estimated 550 pages.

E. In addition to the foregoing, there may be expected during the current calendar ar the following reports:

Special Agent Sargent's report on forestry and the lumbering industry.

Special Agent Atkinson's report on the cotton manufacture.

Special Agent Bond's report on the woolen manufactures.

Special Agent Week's reports on the manufacture of glass and of coke, and of wages manufacturing industry.

Special Agent Jenney's report on fire and marine insurance.

Special Agent Peckham's report on the production, transportation, and manufacture petroleum.

Special Agent King's report on the mining of precious metals, mining industry, laws, gulations, &c. (three volumes).

Special Agent Tumpelly's report on the useful metals, mining industry, &c. (three olumes).

Special Agent Wright's report on the factory system.

Special Agent Dresser's report on the gas industry.

Reports of Special Agent Trowbridge and his assistants on the water-power of the gions not previously mentioned, and on the machinery employed in the manufacture f textile fabrics, boots and shoes, &c.

Special Agent Hutton's report on the manufacture of machine tools.

Reports from Special Agent Dodge on the orchard fruits of the United States, and n the preparation and manufacture of tobacco.

Special Agent Gordon's report on the meat production of States not previously men-ioned.

Special Agent Hawes's report on the quarrying industry of States not previously ientioned.

Special Agent Hall's report on the ship-building industry.

Special Agent Powell's report on the numbers and condition of the Indian tribes of he United States.

Special Agent Waring's report on the social statistics of cities other than those lready named.

Special Agent Petroff's report on Alaska.

Special Agent Waite's reports on schools, colleges, churches, libraries, museums, &c. two volumes).

Special Agent Wines' report on pauperism and crimes, and on the afflicted classes, iz, the deaf and dumb, blind, insane, and idiotic. (Three volumes.)

(Of these reports it is possible that the one on the criminal statistics of the United tates may not be completed until next year.)

Reports by the superintendent on occupations, nativities, and foreign parentage.

Office reports on manufactures, occupations of the people, nationalities, and other tatistics heretofore embraced in the publications of the census.

The foregoing comprises all the statistics which it is intended to embrace in the pub-cations of the census, except those relating to the ages of living inhabitants, deaths, nd the causes of death, and to life insurance, which statistics it is not probable can e completed during the current year.

The volume relating to these subjects will be prepared jointly by Lieut. Col. John . Billings, Surgeon U. S. A., and the Superintendent.

Fifth. Instead of publishing the compendium of the census, as in 1870, in one bulky olume (942 octavo pages), it is deemed more convenient to issue it in two parts, the rst of which, containing statistics of population and agriculture, will be ready for he printer in the course of four or six weeks. The remaining volume will be issued uring the coming fall.

Very respectfully,

C. W. SEATON,
*Superintendent of Census.*

Hon. EUGENE HALE,
*Chairman Select Committee on Census,*
*Senate of the United States.*

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DEPARTMENT OF THE INTERIOR,
CENSUS OFFICE,
*Washington, D. C., May 2, 1882.*

SIR: I have the honor to submit, in compliance with the request made at the meet-ng of your committee on yesterday, estimates as to what will be the probable cost of aps and illustrations for the complete census report, and as to the probable expense f printing the "Compendium of the Tenth Census."

I. For the maps, diagrams, and other illustrations of the report, most of the electro-

typing and lithographic engraving is already done and paid for. I estimate that the future expense for work of this office will not exceed $15,000.

The cost of printing these illustrations, with the cost of paper, will, I judge, average not far from one cent per impression per quarto page. I estimate the number of pages, quarto, of illustrations in the full report at from 400 to 500 pages. This would make the expense of paper and printing the illustrations for an edition of 10,000 copies of the full report at from $40,000 to $50,000. Total expense for illustrations for the first 10,000 copies, from $55,000 to $65,000, and from $40,000 to $50,000 additional for each additional 10,000 copies.

II. Expense of printing Compendium.

The Compendium will contain, as I judge, 1,200 pages. To prepare the stereotype plates for 1,200 pages will cost—

| | |
|---|---|
| For composition (1,200 pages, mostly tabular matter) | $6,855 |
| For stereotyping 1,200 pages | 541 |
| | 7,396 |

To print 100,000 copies will cost—

| | |
|---|---|
| For press-work | $3,072 |
| For folding | 8,172 |
| For paper | 28,640 |
| For binding, in two volumes | 30,000 |
| Total | 69,884 |

Making the total cost of the first 100,000 copies, $77,280.

Additional copies in considerable editions would cost 70 cents each.

Very respectfully,

C. W. SEATON,
*Superintendent of Census.*

Hon. EUGENE HALE,
*Chairman Committee to make Provision for taking the Tenth Census, and ascertaining the Results thereof, United States Senate.*

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OFFICE OF PUBLIC PRINTER,
*Washington, D. C., May* 11, 1882.

SIR: In reply to your inquiry of the 3d instant, asking for certain information concerning the printing of the Census Reports, would say as follows:

There will be no delay in this office in issuing these reports. They will be printed just as fast as the Census Office supplies the copy, provided a sufficient sum of money is appropriated for the printing.

The only intelligent estimate that can be made of the cost of printing them is to give the actual cost of those already printed, viz, "Porter on Public Indebtedness," "Ingersoll on the Oyster Industry," and "Swank on the Iron and Steel Production of the United States."

To print 10,000 copies of the Public Indebtedness Report cost $14,107.87. This does not include the illustrations, which were furnished by the Census Office. Ten thousand copies of "The Oyster Industry" cost $5,936.11. This report contains no illustrations. The same number of Swank's Report on Iron and Steel, &c., cost $5,032.31. This also is exclusive of the cost of the illustrations.

The three reports aggregate 1,144 pages, or about one-sixteenth of the total number to be printed. As you will see, 10,000 copies of these reports cost $25,076.29, exclusive of the illustrations. It would be safe to say that, including the lithographs, it will cost $30,000 to print an edition of 10,000 copies each of these three reports.

It is impossible to arrive at any estimate that would be at all reliable, for the reason that we do not know how much of the text is plain matter and how much is in tabular form; neither do we know how many or the character of the chromo-lithographs. But, judging from what we have seen, I think it will be safe to say that an uniform edition of 20,000 copies of each report will cost at least $1,000,000.

I return herewith the papers accompanying your letter.

Very respectfully,

A. F. CHILDS,
*Chief Clerk, for the Public Printer.*

Hon. EUGENE HALE,
*Chairman Select Committee on Census, United States Senate.*

It will be seen, by an examination of these different estimates, com-
g from the office of the Public Printer and from the Superintendent
the Census, that they differ somewhat in amount as applied to edi-
ons of the entire work of 10,000 copies or 20,000 copies; but a full ex-
ination will show that the estimate of the Superintendent of the Cen-
s is based upon the proposition that the entire work need not exceed
,000 pages, while that of the Public Printer is made upon the basis of
,000 pages.

Taking the entire cost already incurred of publishing the three volumes
on "Public Indebtedness," the "Oyster Industry," and Professor
wank's "Report upon Iron and Steel," as given by the Public Printer,
$30,000, including illustrations, with the accompanying statement of
e Public Printer that these volumes comprise one-sixteenth of the en-
re work of 18,000 pages, it will be seen that upon the basis of 15,000
ages for the entire work, the three volumes named would cover about
ne-thirteenth of the entire work, which would bring the cost of pub-
shing a 10,000 edition, according to the estimate of the Public Printer,
o to $390,000, or for an edition of 20,000 copies, $780,000.

For the same work Colonel Seaton, Superintendent of the Census,
stimatest hat the cost would be $360,000 for an edition of 10,000, and
720,000 for an edition of 20,000; including all maps, illustrations, and
thographing.

The committee believe that, in view of the extensive work embraced
the compendium, which it is proposed should be issued in two vol-
mes instead of one, the popular demand for information upon the cen-
us work will be very largely supplied by the circulation of these two
olumes, and that, if a large edition of the compendium is published,
will obviate the necessity for large editions of most of the other vol-
mes, thus leaving the compendium for popular distribution, and the
her volumes for distribution in smaller numbers to colleges, schools,
nd libraries.

But the committee believes that upon this question of the future print-
ng of the Census volumes and the selection of a portion of the same
or popular distribution the Committee on Printing, which has general
urisdiction over the subject of printing books and documents ordered
y Congress, has much better means of settling this question of distri-
ution fairly and wisely than the Census Committee, and therefore re-
ommends that this report be referred to the Joint Committee on Print-
ng.

The committee refers to a summary accompanying this report, and
ade a part of the same, covering the estimates before referred to.

*Colonel Seaton's estimates.*

| | |
|---|---|
| etting up and stereotyping 15,000 pages, between $95,000 and..... | $100,000 |
| ressework, paper and binding an edition of 10,000 copies of all reports.... | 195,000 |
| n additional 10,000 of all reports would bring the cost of 20,000 copies within $500,000. | |
| lectrotyping and lithographic engraving for maps and other illustrations not already paid for will not exceed $15,000. | |
| rinting these illustrations, with cost of paper, average not far from one cent per impression per quarto page—number pages of quarto illustrations in full report, from 400 to 500 pages—this would make expense of paper and printing illustrations for 10,000 copies of full report, at from $40,000 to $50,000. | |
| otal expense for illustrations for first 10,000 copies, from $55,000 to..... | $65,000 |
| | 360,000 |

CENSUS COMPENDIUM.

(Estimated 1,200 pages.)

| | | |
|---|---|---|
| Preparing stereotype plates for 1,200 pages: | | |
| Composition (1,200 pages, mostly tabular matter) | $6,855 | |
| Stereotyping 1,200 pages | 541 | |
| | | $7,396 |
| Printing 100,000 copies: | | |
| Presswork | 3,072 | |
| Folding | 8,172 | |
| Paper | 28,640 | |
| Binding in two volumes | 30,000 | |
| Total | | 69,884 |
| Total cost of first 100,000 copies | | 77,280 |

Additional copies, in considerable editions, 70 cents each.

*Mr. Childs's estimates.*

| | |
|---|---|
| To print 10,000 copies Public Indebtedness Report, not including illustrations, cost | $14,107 87 |
| 10,000 copies The Oyster Industry, containing no illustrations, cost | 5,936 11 |
| 10,000 copies Swank's Report on Iron and Steel, &c., exclusive of illustrations, cost | 5,032 31 |
| | 25,076 29 |
| The three above reports aggregate 1,144 pages, or about one-sixteenth of the total number to be printed. | |
| To print an edition of 10,000 copies each of these three reports, including illustrations | 30,000 00 |
| Uniform edition of 20,000 copies of each report, including all maps and illustrations | 1,000,000 00 |

H CONGRESS, } SENATE. { REPORT
st Session. } { No. 714.

IN THE SENATE OF THE UNITED STATES.

JUNE 8, 1882.—Ordered to be printed.

. PLATT, from the Committee on Patents, submitted the following

# REPORT:

*e Committee on Patents, to whom was referred the petition of George W. Morse, have considered the same, and respectfully report:*

The petitioner claims to be the inventor of the present breech-load- system of fire-arms, adapted to the use of metallic cartridges and munition for the same, and asks compensation from the United States services rendered, expenses incurred, cost of models furnished, and the use of his inventions; and prays that his claim may be referred the Court of Claims to hear the case and render such judgment in his or as the facts found may warrant and substantial justice require, thout regard to the act limiting the jurisdiction of said court.

Your committee find that the petitioner was a native of New Hamp- re, and resided in New England until 1838 or 1839, when he became itizen of Louisiana. He was from 1840 to 1853 engaged in survey- lands for the government in that State. In 1853 he became State gineer of Louisiana, and afterwards commissioner of swamp lands. married in Louisiana, and accumulated considerable property there. 1856 he came to Washington with certain alleged improvements in ech-loading fire-arms and metallic cartridges for the same, for which obtained patents, and endeavored to secure the adoption of the same the Government of the United States.

Upon the recommendation of John B. Floyd, then Secretary of War, was paid in 1858 the sum of $10,000 for the alteration by the govern- nt of 2,000 of its muskets or rifles, according to his patents, out of appropriation for that purpose, and in 1860 he was paid $3,000 by government for the right to manufacture 1,000 carbines according his plan.

During some months prior to the commencement of the war he was ployed by the government, without compensation, in contemplation the further manufacture of arms according to his plan, in the prep- ation of models and special tools at the Springfield Armory and Har- r's Ferry, and had nearly perfected arrangements for such manu- ture in the government workshop at Harper's Ferry when the war mmenced. Just before the raid on Harper's Ferry by the Confeder- s he left Washington and went to Richmond. He did not return til after the close of the war. He claims not to have engaged in the ellion or to have done any act encouraging or aiding the Confeder- , and states his object in going south to have been the prevention of confiscation of his property in Louisiana. The machinery (including special tools for the manufacture of arms according to his patents)

was carried by the Confederates to Richmond, soon after his arrival there, and he obtained possession of the special tools, claiming them as his property. He went from Richmond to Nashville, where he was employed to repair arms for the State of Tennessee, but did not there attempt to manufacture according to his patents. He registered his patents in the Confederate Patent Office. The machinery was afterwards removed from Nashville to Atlanta, but nothing was done with it at that place. Morse remained there with the machinery for nearly a year. Afterwards the machinery was removed to Greenville, S. C., and he went with it and there manufactured some carbines according to his plan for the State of South Carolina, upon a promise given him, as he claims, that the same should not be used outside the State.

After the close of the war in 1865 he returned to Washington. In 1871 he asked for an extension of his patents. In 1872 a bill allowing such extension passed Congress, in pursuance of which, one of his patents was extended by the Commissioner, and in the case of the other patent the extension was refused.

In 1872 arrangements were made by him for the organization of a corporation in New York known as the "Morse Arms Manufacturing Company." This organization appears from some reasons to have been informal and the corporation was reorganized under the same name in 1875. To this corporation Morse assigned all his patents and all claims against other parties (the government included) for the past use of his inventions.

Soon after the first organization of the Morse Arms Manufacturing Company in 1872, it brought suit in the Court of Claims to recover for the use by the United States of Morse's inventions, upon an implied contract between the government and Morse. In this suit considerable evidence was taken, and the suit, though still remaining on the docket, has never been brought to a final hearing. In 1879, Morse himself brought suit in the Court of Claims to recover damages from the government for the use of his inventions, claiming that the assignment to the corporation was invalid and inoperative. This suit is still pending, but little has been done therein. In answer to both suits in the Court of Claims, the government denies the validity of Morse's patents and the jurisdiction of the court; and as to the suit of Morse, sets up the statute of limitations. In 1875 the "Morse Arms Manufacturing Company" brought suit, in the circuit court in Connecticut, against the "Winchester Repeating Arms Company" for an infringement of Morse's patents. In this suit the defendants deny that Morse was the original inventor of the improvements claimed by him. A very large amount of testimony has been taken upon this issue, the record amounting to several thousand printed pages. The case is still in court and is nearly ready for hearing.

It is unquestionably true that if Morse is the original inventor of the improvements claimed by him, the government has applied his inventions in the alterations and manufacture of a very large number of breech-loading fire-arms, probably as many as 300,000, for which he has received no compensation.

In view of all the circumstances of the case, and especially the fact that the question as to the validity of Morse's patents is now in litigation in a suit with private parties, which will probably be soon reached and determined, your committee think that it would be inexpedient to grant the prayer of the petition, and therefore ask to be discharged *from its* further consideration.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 715.

# IN THE SENATE OF THE UNITED STATES.

JUNE 9, 1882.—Ordered to be printed.

Mr. MILLER, from the Committee on Post-Offices and Post-Roads, submitted the following

# REPORT:

[To accompany bill S. 1727.]

*The Committee on Post-Offices and Post-Roads, to which was referred the bill (S. 1727) for the relief of the American Grocer Association of the city of New York, have considered the same, and report:*

The law of July 12, 1876, for the transmission of matter through the mails, in section 15 provides "that transient newspapers and magazines, regular publications, designed primarily for advertising purposes, or free circulation, or circulation at nominal rates," &c., "shall be transmitted in the mails at the rate of one cent for every two ounces and one cent for each two additional ounces or fractional part thereof." By the act of Congress approved June 23, 1874, "newspapers mailed from a known office of publication, issued weekly or oftener, and addressed to regular subscribers, shall be charged two cents a pound or fraction thereof."

On the 5th day of July, 1877, the Postmaster-General decided that the paper called "The American Grocer" was not entitled to the lower rates of postage, to wit, two cents per pound, upon the ground that it was "designed primarily for advertising purposes"; and the company were therefore compelled to pay for the month of July and August, 1877, the sum of $648. Upon a rehearing the Postmaster-General determined that his first decision was erroneous, and that said paper should be subject only to the lower rate of postage, to wit, two cents per pound. The amount paid by "The American Grocer Association" was, as has been stated, $648. Under the lower rates it would have been $162. Deducting that sum from $648, it appears that said publishing association paid $486 over and above what the Postmaster-General finally decided they should pay. It being in accordance, therefore, with the final decision of the Postmaster-General that said company overpaid that sum, your committee recommend the passage of the accompanying bill; and it is understood that if the money had not been covered into the Treasury it would have been reimbursed by the Postmaster-General to the said company.

The committee therefore recommend the passage of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 716.

# IN THE SENATE OF THE UNITED STATES.

JUNE 12, 1882.—Ordered to be printed.

Mr. FAIR, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1585.]

The Committee on Claims, to whom was referred the bill (S. 1585) for the relief of Daniel Connor, have duly considered the same and accompanying papers, and recommend that it pass.

The facts upon which this recommendation is based are so fully set forth in the official records of the case furnished by the Secretary of the Navy, that your committee ask to make them a part of their report, and append a letter from the Chief of Bureau of Yards and Docks that is pertinent.

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NAVY DEPARTMENT,
*Washington, November* 2, 1881.

SIR: The application made by you in behalf of Daniel Connor has been submitted by me to Admiral Nichols, Chief of the Bureau of Yards and Docks, in accordance with your suggestion. I inclose you a copy of his report in the case. I regret extremely that in a case which appeals so strongly to my sympathy I find myself restrained by law from doing what I would so much wish to do.

I am, sir, very respectfully, your obedient servant,

WILLIAM H. HUNT,
*Secretary of the Navy.*

Hon. N. P. HILL, *United States Senate.*

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BUREAU OF YARDS AND DOCKS,
*October* 31, 1881.

The accompanying certificate of injury to Daniel Connor, a laborer in the employ of the department of yards and docks, at the Washington navy-yard, while in the discharge of his duty, as also the letter of the Hon. N. P. Hill, United States Senator, asking that said certificate may be referred to the proper officer, "and that if it can be legally done, the party, Daniel Connor, may be allowed wages during the time he has been or may be disabled," have been received on reference from the department, and carefully considered, and the papers are herewith respectfully returned, with the following opinion:

The case is one of those which appeal strongly to our sympathy and sense of justice, but can only be officially considered in its legal aspects. The law has made no provision for this kind of case. It does not come under the provisions of the laws relating to pensions.

There is no provision in the naval appropriation bills covering such case. Section 3738 of Revised Statutes, fixes eight hours as a day's work, and section 1545 is in these words: "Salaries shall not be paid to any employés in any of the navy-yards, except those who are designated in the estimates. All other persons shall receive a per diem compensation for the time during which they may be actually employed." Under this provision of law I see no way in which the wages of the unfortunate Daniel Connor can be continued to him, he being not "actually employed."

ED. T. NICHOLS,
Chief of Bureau.

UNITED STATES NAVY-YARD, WASHINGTON,
OFFICE OF CIVIL ENGINEER,
*October* 26, 1881.

This certifies that Daniel Connor, a first-class laborer in yards and docks department of this yard, while employed in excavating gravel for use in the yard, did, on the 14th instant, by the caving in of the gravel bank, sustain a fracture of the leg, a severe contusion of the arm, and was otherwise so injured as to confine him to bed and incapacitate him from performing any kind of labor.

GEO. W. CONOVER,
*Carpenter, U. S. N., for Civil Engineer.*

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UNITED STATES NAVAL DISPENSARY,
*Washington, D. C., February* 23, 1882.

SIR: I have the honor to report that in obedience to your order of the 20th instant, I have carefully examined Daniel Connor, and have consulted his attending physician, Dr. J. S. Beale, who is known to me to be in good standing. He is nearly fifty-nine years of age, was born in Ireland, and had been a faithful laborer at the United States navy-pard, Washington, D. C., for many years, when he was seriously injured on October 14, 1881, by the caving-in of a gravel bank, which he was excavating for the purpose of obtaining gravel for the navy-yard. His injuries consisted in fracture of both bones of the right leg, in the upper third, still ununited; severe contusion of the same leg and ankle, with subluxation of the latter, still painful and swollen; severe contusion of the left foot, still swollen and painful; dislocation of the right shoulder, still subject to shooting pains; severe contusion of the right hand, still painful; fracture of the eighth, ninth, and tenth ribs on the left side, producing traumatic pneumonia, according to his description; injury to the kidneys, as shown by pain and bloody urine passed for two months; he now urinates every twenty minutes, being unable to hold his water; his urine, examined by Passed Assistant Surgeon S. H. Griffith, U. S. N., showed the existence of mild oxaluria, which is an evidence of the poor state of his general health. His nervous system is shattered, and he is completely broken in health. In my opinion, sustained by that of Dr. J. S. Beale, he is permanently disabled from earning his living by manual labor.

I am, very respectfully, your obedient servant,

A. A. HOEHLING, *Surgeon, U. S. N.*

Surgeon-General P. S. WALES, M. D., U. S. Navy,
*Chief of Bureau of Medicine and Surgery, Navy Department.*

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WASHINGTON, D. C., *March* 13, 1882.

This will certify on the 14th day of October, 1881, I was, in the absence of the family physician, Dr. Beale, called upon in conjunction with Dr. Reynolds of this city, to render professional aid to Mr. Daniel Connor, of this city, who had been severely injured by the caving in of a gravel bank which he was engaged in working upon at the Washington navy-yard.

The tibia and fibula of the upper third of the right leg were found to be badly comminuted, while the same bones suffered from simple fracture in the lower third.

The injury was of such a severe nature that a grave prognosis was given, which opinion was fully shared by Dr. Beale, who came in a little later and assumed charge of the case. The limb was carefully adjusted in a suitable apparatus. The left leg was severely contused. Upon examination to-day I find the bones of the upper third of the leg still ununited, with little prospect of their doing so.

The constitution of Mr. Connor has been so broken down, and shattered by this dire calamity that, in my opinion, he will be permanently disabled.

JNO. W. BAYNE, M. D.

We fully concur in the above statement.

J. S. BEALE, M. D.
W. B. REYNOLDS, M. D.

March 13, 1882.

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BUREAU OF YARDS AND DOCKS, NAVY DEPARTMENT,
*Washington, April* 27, 1882.

*DEAR SIR:* The interest I feel in the family of Daniel Connor must be my excuse for troubling you. Some months ago Mr. Connor, while in the employ of this department, met with a very severe accident, through no fault of his own, and has been ren-

lered helpless, and a burden upon instead of a support to his family. His daughter, Mrs. O'Leary, informs me that a special bill has been introduced in the Senate for his benefit, and that it is now in the Committee of Claims in your charge. At Mrs. O'Leary's earnest solicitation I address this note to you, hoping that it may be in your power to forward the bill in question, in behalf of himself and his deserving family. An application was made some time since that Mr. Connor's pay might continue during his illness, but the law interposed a bar to this.

Begging your indulgence for the liberty I have taken in writing you, and asking your kind consideration for this poor man,

I am, very truly, your obedient servant,

ED. T. NICHOLS,
*Rear-Admiral, United States Navy.*

Hon. J. G. FAIR,
*United States Senator.*

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 717.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2278.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2278) granting a pension to John H. Jackson, have examined the same and report:*

This bill was considered and favorably reported by this committee at the second session of the Forty-sixth Congress. The committee have examined the evidence, and find the report submitted to the last Congress fully sustained. That report is adopted, and reads as follows:

John H. Jackson, a resident of Pleasantville, Sullivan County, Indiana, late sergeant of Company G, One hundred and forty-ninth Indiana Volunteers, enlisted February 14, 1865, and was discharged September 22, 1865. He filed his declaration for a pension November 5, 1875, alleging therein, and in affidavits subsequently filed, that he contracted chronic diarrhea about March 12, 1865, at Edgefield, Tenn.; that while suffering therefrom he was furloughed home about June 14, 1865, on the recommendation of his regimental surgeon; and that about August 25, 1865, in returning to his regiment from said furlough, the train on which he was being borne broke down through a bridge at Richland Creek, Tennessee, causing a severe injury to his head and breast, which has resulted in disease of the brain and heart. His averments are supported by the testimony of Capt. James D. Parvin, of his company, and by comrade Jonathan Hart, as to the origin of disability in the service, and that of Dr. James McDowell as to his condition while at home on furlough, and since his discharge. The Adjutant-General reports him injured by a railroad accident at the time alleged, and the Surgeon-General shows him treated for the alleged injury to head; but the records of the War Department fail to show that the furlough, on returning from which he was injured, was granted by reason of sickness. Hence the claim was rejected May 7, 1877. That the furlough was granted by reason of sickness—chronic diarrhea—is fully proven by the affidavit of Lieutenant Weir, who came home with him, and the testimony of Dr. James McDowell, who treated him while at home.

In view of all these facts, which prove conclusively how meritorious this claim is, taken in consideration with all the evidence, official and *ex parte*, your committee are of the opinion that the claimant is justly and rightfully entitled to a pension; they therefore report back the accompanying bill, with a recommendation that it be passed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 718.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1921.]

*The Committee on Pensions, to whom was referred the bill (S. 1921) granting a pension to James Sheridan, have examined the same, and report:*

That James Sheridan enlisted December 14, 1865, in company G, Fifth United States Cavalry, and was subsequently transferred to the Executive Mansion to act as an orderly; while performing such duties the claimant had the misfortune to have his horse fall on him on New York avenue in 1867, and had his collar-bone fractured and his head cut. For this injury he was pensioned at $6 per month from June 2, 1881, for disability of right clavicle and left side of head. He now applies for an increase of pension to $12 per month, alleging defective sight in the injured eye.

The committee have carefully examined the evidence on file and fail to discover any ground whatever for an increase, and therefore recommend that the bill be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 719.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1099.]

*The Committee on Pensions, to whom was referred the bill (S. 1099) granting a pension to Bridget Sherlock, have had the same under consideration, and report:*

That Bridget Sherlock is the mother of Stephen Sherlock, a private in Company F, Fifteenth Indiana Volunteers, who enlisted June 14, 1861, was discharged November 23, 1862, died June 23, 1863.

The soldier was discharged for disability by reason of scrotal hernia, with severe pains in lumbar region, heavy dragging sensation, numbness, and difficulty in using the lower extremities, which wholly deprived him of the capacity to earn his subsistence. His case was one of very bad scrotal hernia, caused by a fall over a log, May 10, 1862, in front of Corinth, while carrying a heavy load of rails upon his shoulders, for the purpose of building a road over which to pass the artillery and wagons during that memorable siege.

Dr. Ben. Newland testifies that he had known the soldier during several years previous to his death; saw him at various times shortly before his death; and though he did not treat him personally after his discharge, he recollects that the soldier was not in robust health at the time he received the injury from which he died June 23, 1863.

The cause of death was erysipelas, which resulted from amputation of the left foot. He was a conductor on a freight train on the Louisville and Chicago Railroad, and in attempting to get on the train his foot slipped, and the train, being in motion, passed over his left foot, crushing it to pieces. Deponent's foot was amputated at the ankle. He never fully reacted. Erysipelas ensued in a few days and he died.

From the foregoing facts it is quite evident that this case was properly rejected by the Pension Office, the cause of death having no relation whatever in its origin to the soldier's service. Therefore your committee recommend that the bill do not pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 720.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4345.]

*The Committee on Pensions, to whom was referred the bill (H. R. 4345) for an increase of pension to Laurinda G. Cummings, respectfully submit the following report:*

Claimant, Laurinda G. Cummings, is the widow of Gilbert W. Cummings, who enlisted September 20, 1861, and served as colonel of the Fifty-first Illinois Volunteers until his resignation on account of disability, September 30, 1862. Gilbert W. Cummings died from said disability in March, 1877.

Your committee find that claimant filed her application for pension in the pension department in April, 1880. The application was granted in July, 1880, at $30 per month, from March, 1877.

Your committee are of the opinion that claimant is now receiving a pension for the full amount that she is entitled to under the law, and that there is no good ground for granting an increase by special act of Congress.

Your committee therefore recommend the indefinite postponement of the bill.

)ONGRESS, } SENATE. { REPORT
*Session.* } { No. 721.

IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

AMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1919.]

*ommittee on Pensions, to whom was referred the case of Thomas H. Allen, respectfully report:*

imant enlisted in 1863, in Company C, One hundred and twenty- Regiment Indiana Volunteers, and was honorably discharged in er, 1864, as a second lieutenant. He applied for a pension in 1866, eumatism in left hip. His application was approved, and he was ed a pension of $7.50 per month from October, 1864. This pension ncreased to $15 from 1868; reduced to $7.50 from 1875; increased 5 from 1876; increased to $24 from 1877.

imant files with your committee affidavits of a number of phy- ıs, which tend to show that his disability has increased.

ur committee are of opinion that claimant has heretofore been ed justly and liberally by the Pension Department, and see no good n why he should not apply to that office for further increase.

facilities of that office are especially adapted for the proper inves- on of such cases, and the laws governing that office are such as the adjudication in this and similar cases.

ır committee therefore recommend the indefinite postponement of ll.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 722.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1901.]

*The Committee on Pensions, to whom was referred the bill for the relief of Edward Schenckel, having considered the same, submit the following report:*

Edward Schenckel was a sergeant in Company B, Ninth Pennsylvania Reserves. He enlisted in May, 1861, and was discharged in November, 1862, on account of a gunshot wound in left lung, received at Gaines's Mill, June 27, 1862.

The Pension Department granted him a pension in December, 1863, of $6 per month from November, 1862. This pension was increased to $8, subsequently reduced to $4, again increased to $6, and finally increased to $18 from November, 1872.

The bill introduced for his relief directs that claimant be paid at the rate of $18 per month from the date of his discharge.

The Pension Department rejected this claim on the ground that the claimant has been properly rated, according to the provisions of law, for the extent of the disability discovered in the surgical examinations to which the pensioner has been from time to time subjected.

On appeal to the Interior Department, the Secretary thereof fully sustains the decision of the Pension Department.

Your committee do not find any evidence tending to prove that injustice has been done claimant by any of the reports of the examining surgeons, nor any good grounds for reversing the decision of the Commissioner of Pensions, sustained by the Secretary of the Interior.

Your committee therefore recommend the indefinite postponement of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 723.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

Mr. WALKER, from the Committee on Public Lands, submitted the following

# REPORT:

[To accompany bill S. 1086.]

*The Committee on Public Lands, to whom was referred the bill* (*S.* 1086) *to indemnify the State of Arkansas for swamp and overflowed lands within said State, sold by the United States since March* 3, 1857, *and for other purposes, submit the following report:*

That certain lands in Arkansas which were granted to the State by acts of Congress of September, 1850, and March, 1849, and confirmed to the State by act of March, 1857, were afterwards sold by the United States to individuals for cash. That the State, relying on being indemnified by the general government, and to quiet the title to such lands in the purchasers, by an act of the general assembly approved December 14, 1875, ratified and confirmed the titles so made by the United States.

By the decision of the Acting Commissioner of the General Land Office, hereto appended and made a part of this report, the State of Arkansas is equitably and justly entitled to the proceeds of the sales of these lands so sold and patented by the United States. It appears that since the operation of the act of March 2, 1855, ceased, there is no authority of law for the Secretary of the Interior to indemnify the State for these lands so sold and patented by the government.

The committee are of opinion that the State of Arkansas is entitled to the indemnity provided for by the bill, and report the same back with the following amendments:

After the word "shall" in line 15, strike out the residue of the section and add the following: "draw his warrant on the Treasury for the amount ascertained to be due said State, payable to such agent, which shall be payable out of any money in the Treasury not otherwise appropriated;" and recommend that the bill, as so amended, be passed.

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DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, D. C., April* 21, 1881.

SIR: Referring to the application of the State of Arkansas, presented by you as attorney for the commissioner of lands for said State, for the repayment to the State of the amount of purchase money paid by Thomas E. Lamb for the southeast quarter of southwest quarter of section 32, township 12 south, range 6 west of the fifth principal meridian, I have to state as follows:

The tract in question *was one of the tracts* selected by the State, October 3, 1856,

as swamp land, under the act of Congress of September 28, 1850. The list of selections of that date embraced the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of the section, township, and range above mentioned.

The act of March 3, 1857 (11 Stat., 251), confirmed to the several States entitled to swamp lands under the grant of 1850 all selections that had been made prior to that date, so far as the same remained vacant and unappropriated and not interfered with by an actual settlement under existing laws.

Both tracts embraced in the selection of October 3, 1856, were, on March 3, 1857, as appears from the records of this office, vacant and unappropriated and not interfered with by an actual settlement under the laws of the United States. They were, therefore, confirmed to the State by the act of March 3, 1857.

The act of September 28, 1850 (9 Stat., 519), granting swamp and overflowed lands, vested an immediate title in the State to all lands within the State of the kind described in the act (Fletcher *v.* Pool, 20 Ark., 100; Hempstead *v.* Underhill, *Ib.*, 337; Brand *v.* Mitchell, 24 Ark., 431; French *v.* Fyan *et al.*, 3 Otto, 169). It was the duty of the Secretary of the Interior to identify such lands, make lists thereof, and cause patents to be issued therefor (Railroad Company *v.* Smith, 9 Wall., 95; French *v.* Fyan *et al.*, 3 Otto, 169).

It having been found that many conflicting entries existed on lands claimed by the States to be swamp lands, Congress passed an act on March 2, 1855 (10 Stat., 635), providing that where land claimed as swamp had been sold by the United States for cash, or had been located with warrants or scrip, prior to the issue of patents to the State, as provided by the act of September 28, 1850, patents should be issued to the purchaser or locator, unless the State had also sold any of the lands so entered or located, in which case patent to the purchaser from the United States should not issue until the State should release its claim. It was further provided that, on due proof being made as prescribed in the act that any of the lands purchased from the United States were swamp lands within the true intent and meaning of the grant, the purchase money received by the United States should be paid over to the State; and where the land had been located by warrant or scrip, the State or States should be authorized to locate a quantity of like amount upon any of the public lands subject to entry at $1.25 per acre.

The foregoing provisions of the act of 1855 were extended to March 3, 1857, by the act of the latter date (11 Stat., 251). The law as to erroneous disposals of swamp lands by the United States after September 28, 1850, and prior to March 3, 1857, was then that the land so disposed of should be proven to have been swamp on said September 28, 1850; the State or States should receive indemnity for such land, the indemnity to be the amount of the purchase money which had been paid to the United States where the lands had been sold for cash, and an equivalent quantity of land where the disposal had been made by warrant or scrip location.

The States were thus fully indemnified for all lands lost to their respective grants of swamp and overflowed lands between September 28, 1850, and March 3, 1857, while the individual entries made on such lands under the public land laws of the United States during that period were confirmed by statute.

After March 3, 1857, a different condition existed. By the act of that date all prior selections of swamp and overflowed lands under the act of 1850, so far as the same remained vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, were confirmed absolutely to the respective States. No question as to the swampy character of the land embraced in this confirmation could be raised, and no indemnity to the States was provided for in case any of such lands should be sold by the United States after March 3, 1857. This act perfected the title of the States to the selections of swamp lands which had then been certified to and filed with the Commissioner of the General Land Office, so far as they were then vacant, unappropriated, and not interfered with by actual settlement under existing laws. The United States could convey no title after this to any of these lands unless they come within the exceptions of the act. (Martin *v.* Marks, 7 Otto, 345.)

Further references to judicial decisions relating to the nature of the swamp land grant, and the effect of the confirmatory acts, are omitted as unnecessary.

The indemnity acts protected in their respective grants against the effect of all erroneous sales made by the United States after March 3, 1857, by the confirmation to the States of the lists of selections filed in the General Land Office prior to that date.

But the same liability to erroneous sales by the United States of the confirmed lands still remained, and from the same causes that had operated relative to erroneous sales prior to March 3, 1857. The principal cause lay in the imperfect condition of the land records of the local offices, owing to which, entries on the confirmed lands were allowed in ignorance of the fact that they were State lands. In the present case one of the tracts of land embraced in the State selection of October 3, 1856, namely, the southeast quarter of southwest quarter section 32, township 12 south, range 6 west,

was erroneously sold by the United States to Thomas E. Lamb on April 20, 1857, and patent was inadvertently issued to him.

When the State selection was reached for examination, in the order of business in this office, it was found that said tract had been sold and patented as aforesaid. Under the rule that a second patent must not issue where a former patent is outstanding, the State selection of this tract was not acted upon.

But Lamb's patent conveyed no title to him, since the land belonged to the State at the date of his entry. The sale to Lamb was therefore illegal and his patent void.

It now appears that by an act of the legislative assembly of December 14, 1875, the State ratified and confirmed to the purchasers from the United States the titles to the lands that had been granted to the State by the act of Congress of September 28, 1850, and which had afterward been sold by the United States. If it was intended by that act that its provisions should apply to lands erroneously sold by the United States after March 3, 1857, and if such be its legal effect, then it would appear from the preamble to the act that the legislature acted upon the presumption that the State was entitled, under the laws of Congress, to receive indemnity in all cases of swamp lands sold by the United States after September 28, 1850, which should prove to have been, at that date, of the character described in the granting act.

But, as heretofore shown, the right of indemnity under existing laws goes only to sales made prior to March 3, 1857; for sales subsequent to this latter date no indemnity is now provided. The State had a perfect legal right to the land in place, which right might have been insisted upon and maintained, notwithstanding the erroneous sale and illegal patent to Lamb. But the State magnanimously chose to release its claim to lands so erroneously sold in favor of the purchasers from the United States, rather than to insist upon its strict legal rights, to the disadvantage, and often serious injury, of its citizens.

The State having voluntarily protected innocent purchasers of the United States in the possession of lands that Congress had previously granted and confirmed to the State, by yielding its own title to such lands, relying upon the justice of the United States to save the State from loss in so doing, it is now claimed that the amount of purchase money paid by these purchasers to the United States should be refunded to the State. Manifestly, this is an equitable claim, and it would be in consonance with the policy of the indemnity act of March 2, 1855, to allow it. But the operation of that act is limited to March 3, 1857. Accordingly, in cases of erroneous sales made by the United States after March 3, 1857, the law granting swamp indemnity to the States does not apply. Yet the reason of the law exists in this class of cases equally as in those occurring prior to the date mentioned.

This department must, however, be governed by the statute, and the limitations of the law can only be removed or enlarged through the remedial legislation of Congress.

There is no present authority of law under which the purchase money paid by Thomas E. Lamb can be refunded to the State of Arkansas.

Very respectfully, your obedient servant,

C. W. HOLCOMB,
*Acting Commissioner.*

Hon. W. W. WILSHIRE,
*Washington, D. C.*

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CONGRESS, } SENATE. { REPORT
t Session. } { No. 724.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

ROVER, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1997.]

*Committee on Military Affairs, to whom was referred the bill (S. 1997) nting a certain right of way to the San Francisco and Ocean Shore ilroad Company, having had the same under consideration, submit following report:*

appears that application is made for a grant of the right of way over Presidio Military Reservation and Black Point, near San Francisco, e State of California, to the San Francisco and Ocean Shore Rail- Company for the construction of their road. The bill provides—

t said railroad shall be located, constructed, and operated within the bound- of said government property under and subject to such regulations and condi- as may be from time to time prescribed by the Secretary of War.

e committee find that the construction of said road will be of bene- said military reservation, and will not be injurious thereto; that ill is well guarded against abuses in the operation of the railroad, has the approval of the Secretary of War.

e committee therefore report the same back, with the recommenda- that it do pass, with the following amendment, to wit: Strike out fter the words "*Provided further*," in line 19, page 2, and insert as ws: "Congress shall have the right at all times to alter, amend, repeal this act."

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H CONGRESS, } SENATE. { REPORT
st Session. } { No. 725.

# IN THE SENATE OF THE UNITED STATES.

JUNE 13, 1882.—Ordered to be printed.

PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1519.]

*Committee on Pensions, to whom was referred the bill* (*S.* 1519) *granting a pension to Darius A. Dow, having considered the same, report as follows:*

ow was surgeon of the Fourth Illinois Cavalry, and is now insane. plication for a pension has been made in his behalf by his conserva- and rejected by the Commissioner of Pensions upon the ground his insanity had its origin in causes which existed prior to his stment, and is in no way due to his military service.

e enlisted on the 16th of October, 1861, and was discharged, after months' service, April 20, 1862. His declaration for a pension was March 8, 1877. The basis of the claim is that on or about the 1st larch, 1862, at Fort Donelson and Pittsburgh Landing—from over- k and exposure, owing to a scarcity of surgeons—he was compelled ork day and night, contracting a nervous disease, sleeplessness and ipelas, which, after his service, developed insanity. There is no rd evidence of any insanity or mental trouble. He resigned upon ground of ill health (nature not stated) and private affairs. Before ice he was a practicing physician at Westford, Mass., from which e he went to Illinois to become surgeon of the Fourth Illinois Cav-

fter his resignation, in 1862, he returned to Westford and resumed practice there. Some time after his return he had periods of excite- t, which upon their recurrence increased in intensity until, in 1873, condition became that of pronounced insanity, and he was confined n asylum. After a confinement of some two years he was discharged, not cured, and is still insane, probably incurably so.

he question in the case is whether his insanity is the result of his y service or due to other causes. The case was submitted to the sion Office for adjudication, upon evidence as to mental soundness re service, given by his wife, by Leonard Sweet, his brother-in-law, Ellen Twigg, his wife's sister, and David Twigg, all of whom swear he never manifested any symptoms of insanity before service. , the evidence of Geo. T. Day, Leonard Luce, and Edward Prescott, dents of Westford, who, in a joint affidavit, say that Dr. Dow—

as industrious in his profession, temperate in his habits, and robust in his health, and ed no indications of insanity until after his return from the Army in May or , 1864.

As to his condition in the Army, Dr. C. Goodbrake, who was a surgeon in another Illinois regiment (with what opportunities for observation does not clearly appear), testifies in substance that he became acquainted with Dr. Dow in fall of 1861, when he was to all appearances physically sound and well, and that after the battles of Fort Donelson and Pittsburgh Landing the surgeons in attendance upon the sick and wounded in those places were very much overworked, and suffered from the want of rest and sleep, and affiant believes that it was from this cause that Dr. Dow became sick in body and very much dejected in mind; that the said Dr. Dow had charge of a hospital at Savannah, Tenn., soon after the battle at Pittsburgh Landing, and that from stepping over diseased persons, who were lying on the floor of the hospital, he contracted a disease similar to erysipelas, and erysipelatous spots came on his legs, which worried and alarmed him very much, so much so, in fact, that sometimes he would send for affiant a dozen times a day, and affiant believes that this added very much to his physical and mental disorders, causing nervous excitement and great sleeplessness, so that affiant thought at times that Dr. Dow was laboriug under incipient insanity.

On this point also is the testimony of his brother-in-law, Leonard Sweet, who says that immediately after the battle of Pittsburgh Landing he went to the front and spent several days with Dr. Dow; that there was a marked change in him from what he had been formerly, and from what affiant now knows he has no doubt but that at the time he was partially insane, and made so by the excitement and exposure incident to Army life.

In this connection it may be stated that it appears in the Pension Office that the assistant surgeon of the Fourth Illinois Cavalry, who was constantly with Dr. Dow in service, was shown the affidavit made by Dr. Goodbrake and requested to make a similar one, but declined, stating his reason to be that he did not think there was any ground on which to base the application for a pension. Evidence of Dr. Dow's condition after his discharge was furnished, as heretofore stated, and the claim passed for adjudication. Thereupon an order was made for a surgical examination of Dr. Dow at Chicago. Upon a statement that Dr. Dow was then in Massachusetts, filed by his attorney, the place was changed, and he was ordered to be examined by the surgeon at Lowell, Mass. The examining surgeon's certificate was as follows:

> The order says "insanity," and enjoins me to inquire its origin. Dr. Dow entered the service October, 1861, and was discharged April, 1862. He had in March, 1862, erysipelas and got well, except weak. He came home to Westford, Mass., and practiced medicine eleven years, till 1873, when he was thought to be insane and placed in a hospital; continued about two years; is now broken down in body and mind, caused by insanity, in part, but it is hard to connect it with the war, as a or the cause. His grandfather and brother were insane. It is "hereditary." His want and dependence prompt to pension, I fear, on the part of friends. I have known him thirty years, and as a brother physician would be glad to help him.

Upon receipt of the foregoing certificate the Commissioner of Pensions ordered an investigation to be made by a special agent, who seems thoroughly to have examined the whole subject. The witness Prescott testified that Dow was before and after his service his (Prescott's) family physician, and that he never saw Dow prior to his enlistment when he showed any signs of mental derangement, but that after his discharge (he could not say how long after) he began to have times of excitement when he manifested indications of insanity. Luce, another witness who testified originally in the case, while saying that he never noticed

ıy indications of mental derangement or insanity in the said Dow prior enlistment, also says that he was informed by Dow himself that inity was hereditary in his family, and that—

Affiant now has no recollection of the said Dow's manifesting any signs or indicaıns of insanity immediately after his discharge, and he entered upon the practice his professiou, and was considered a skillful and successful physician. That some tle time after his return from the Army, affiant cannot say how long, the said Dow gan to give indications of mental derangement, which first manifested itself by a eat volubility and considerable boisterousness and excitability in talking, and at nes by loud singing when he would be driving along the road. These manifestaıns increased. He seemed to lose his power of judgment gradually. Had delusions regard to his skill as a physician; seemed to think he could judge of diseases by tuition, and finally became so decidedly insane as to be sent to an insane hospital. ıat prior to said Dow's service his habits were, so far as affiant knows, good; but ter his service, there were times before affiant noticed any indications of insanity, hen the said Dow appeared to be under the influence either of liquor or opium. He nnot say positively whether it was either. He had the impression, when he first ticed the indications of mental trouble in the said Dow, that it was the result of e hereditary difficulty.

This witness is a Congregational clergyman at Westford, Mass., aged venty-nine years.

Geo. T. Day (third of the original witnesses, Dow having been his mily physician before and after service) is a merchant in Westford. e says that Dow was considered, before his enlistment, generally to be sound mind, but affiant remembers that there were times when Dow ppeared to be under considerable excitement mentally, and at these mes he manifested extraordinary physical and mental activity as comıared with his ordinary life. He would ride a great deal, seemingly ithout being affected physically, when generally he could not stand ard riding. He would talk more than usual, and in an excited way. hese attacks would last a week or two, but he always attended to his usiness at such times; that the said Dow returned to Westford soon ter his discharge from the army and resumed the practice of his prossion; that some three or four months after his return to Westford e had an attack similar to those described as occurring before his enstment, but the attack was longer than before his service and more vere. As these attacks became more frequent, they began to be acmpanied by delusions, &c., and finally he was sent to hospital.

The special agent then examined other witnesses, some of whom had ticed nothing unusual in Dow's appearance before he entered the serve, others of whom had observed before his enlistment periods of extement similar to those which subsequently to his discharge seem to ave culminated in insanity; some of them attributed such excitement the use of liquor, opium, or hasheesh. Others thought that his habits ere good. All of them had heard that insanity was hereditary in the mily. One of the witnesses, William Reed, says that, before his serice—

Dows was generally considered perfectly sound and practiced his profession steadily, ıt he was a nervous excitable man always, and affiant distinctly remembers that was always subject to spells of excitement, especially whenever he got thoroughly terested in any subject, or when he had any difficulty with any person or fancied at he had, especially with physicians. At such times he seemed to lose all control of mself, became violent, rode about a good deal at unsuitable times, &c. Affiant reembers two such times before Dr. Dow went into the army. That after his disarge he did not appear to be any different than before his service, except that when had his times of excitement they were more marked and severe, and lasted longer.

Dr. Dow was affiant's family physician.

Arthur Wright, in whose family Dr. Dow practiced before and after his service, says that he—

Does not think he was considered at all insane before service, but there was this peculiarity about him, that he was a very nervous, excitable man, and whenever he became interested in any subject he would become very excited and indulge in a good deal of talk, and if he had any enmity against any one he would talk very violently against that person. That after his discharge he resumed his practice and was quite busy, and affiant did not notice any difference in his conduct or actions than what they were before enlistment, but after being back some time the attacks of excitability became more frequent and severe, and he began to have delusions about his ability to judge of diseases, &c., and finally became noticeably insane.

Mr. H. Fletcher—

Remembers particularly at one time in 1860 Dr. Dow became greatly excited in reference to the vaccination by another physician of some parties with poisonous matter, which caused the death of one or two. At that time Dr. Dow rode all over town, both day and night, and at all hours, talking incessantly with every one who would talk with him, and got in such a condition that affiant did not think him fit to treat any one professionally, and discharged him from attendance upon his wife. This was in the spring of 1860.

Witness speaks of other similar occurrences before his service, and says that for some time after his discharge he did not seem to be any different than before his enlistment.

T. A. Bean, another witness, says he considered Dow sane before his enlistment, but speaks of his times of excitement, when he talked incessantly and seemed somewhat deluded. This witness went from Westford and joined the Fourth Illinois Calvary in December, 1861, and acted as ward-master of the regimental hospital till March 5, 1862. He says that he saw Dr. Dow every day during that time, and knows that he was ugly, cross, and abusive in speech, and seemed to be under the influence of liquor, although he never saw him drink any. He did not think him insane, when with him in the service, but simply that he used too much liquor.

John O. Green, a physician, has no recollection that said Dow, before his enlistment, had manifested any signs of insanity, but appeared in good health.

William A. Webster, another physician, who first became acquainted with Dow in March, 1867, supposed, from what he knew of Dow's case, that his insanity was hereditary.

William H. Hills, aged 56, swears that he was acquainted with the Dow family, and that Dow's mother was considered "queer"; that his sister was confined in the insane asylum at Concord; that his brother was reported to have been insane.

Other witnesses testify that the Dow family have always been peculiar; that Dow's grandfather was insane.

The superintendent of the McLean Asylum, at Somerville, Mass., where Dow was first confined in 1873, gives the following transcript of the records for his admission:

March 5. Admitted. Native of Boston; maternal grandfather was insane, and a sister and brother have been patients in this asylum; married; physician.

In 1862, while in the army, had a period of excitement followed by depression, but no particulars of his condition at that time are given by his friends. The present attack commenced about two months ago, and during this time has been growing more and more exhilerated and excitable; has been rushing about among his patients, pretending to rec*ognize* disease by intuition, &c.

At the Worcester Hospital the record says:

ommitted April 18, 1873; age 52; born in Boston; physician; married; insane four nths; cause, hereditary predisposition; maternal grandfather, brother, and sister ane, &c.

The application for his admission, from which this statement was ken, was signed by his wife, and his nephew gave bonds for his sup-rt.

Upon the report of the special agent the application for a pension was ected by the Commissioner. Affidavits were subsequently filed upon equest to reopen the case, in which Mrs. Dow testifies she was not are of the character of the paper she signed stating that the grand-her, brother, and sister of Dr. Dow were insane, accounting for the anity of the brother by a fall, the insanity of the sister by the shock eived upon the sudden death of her husband, and denying the in-nity of the grandfather, and its existence other than as stated in family; reasserting the soundness in body and mind of her husband or to enlistment. This statement she corroborates by an affidavit Samuel Kelly, a physician seventy-eight years old, with this excep-n, that in the affidavit prepared for him, speaking of the grandfather, her, and grandmother of Dr. Dow, the following statement appears:

hat neither of them and neither of their children, all of whom are known to the onent, were of unsound mind.

To this he adds, in his own handwriting: "until very late in life." e affidavits so filed, with a view to a reconsideration of the case, re held by the Commissioner of Pensions not to change its statutes, d the rejection was adhered to.

In view of the evidence in this case, so fully summarized by the com-ttee, it is impossible, in the opinion of the committee, to say that the imant's insanity had its origin in the service, or in causes due to his vice. Claims for pension must be established by proof; and while committee would not insist upon the same degree of proof required establish other claims against the government, there should at least a preponderance of evidence sustaining the application. The com-ttee are unable to find such preponderance in this case, and are clearly the opinion that it would be improper to overrule the decision of the mmissioner, made after a very full and careful examination of the se, upon the recommendation of medical officers of skill and experience such matters; and the indefinite postponement of the bill is therefore commended.

'TH CONGRESS, 1st Session. } SENATE. { REPORT No. 726.

# IN THE SENATE OF THE UNITED STATES.

JUNE 14, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 752.]

*The Committee on Claims, to whom was referred the bill (S. 752) authorizing the Solicitor of the Treasury to grant relief to Florence W. Kirwan, submit the following report thereon:*

On the 30th day of November, 1869, the government sold at public sale, at Harper's Ferry, W. Va., certain lots or parcels of land belonging to the United States, located at Harper's Ferry. Ten per cent. of the purchase-money was paid by each purchaser at the time of sale, and the balance was secured by mortgage on the premises sold, and was payable in yearly installments with interest. The purchasers at this sale subsequently complained that they had agreed to pay an exorbitantly high price for the lands sold to them, respectively. Congress, by an act approved June 14, 1878, granted relief to said purchasers. The following is a copy of said act:

[PUBLIC—No. 89.]

AN ACT authorizing the Solicitor of the Treasury by and with the consent of the Secretary of War, to cancel certain contracts for the sale of lots of land made at Harper's Ferry in the year eighteen hundred and sixty-nine by the United States, to resell the same, and sell or lease all other real estate and riparian rights now owned by the United States at Harper's Ferry, West Virginia.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Solicitor of the Treasury, by and with the consent of the Secretary of War, be, and he is hereby, authorized to cancel contracts with and release each and all purchasers of lots of land from their purchases made on the thirtieth day of November, eighteen hundred and sixty-nine, at and near Harper's Ferry, West Virginia, whenever such purchaser or purchasers shall quitclaim and release said lots or parcels of land to the Government of the United States by deed in such form as may be required by the Solicitor of the Treasury: *Provided*, That such quitclaim and release shall be executed and tendered to the Secretary of War within four months from the passage of this act.

SEC. 2. That whenever any of the said lots and parcels of land shall be quit-claimed and released in pursuance of section one of this act, the Solicitor of the Treasury shall, by and with the consent of the Secretary of War, cancel the obligation of the purchaser or purchasers thereof and release the same from all liability to the Government of the United States for the purchase money of such lot or lots of land. And the Solicitor of the Treasury shall, when he deems it expedient to subserve the interests of the government, have the power, and he is hereby authorized to offer for sale said lots or parcels of land, so quit-claimed and released, by auction, after first giving notice of the time, terms, and place of sale in pursuance of existing law, upon such terms as in his judgment he may deem expedient.

SEC. 3. That the Solicitor of the Treasury is further authorized to make sale, in pursuance of law, of the whole or *any part of* said property, or, if he deem it expedient

and better for the public welfare, lease for any term of years and part or all other real estate and riparian rights now owned by the Government of the United States at or near Harper's Ferry, Jefferson County, West Virginia.

SEC. 4. That the Solicitor of the Treasury be, and he is hereby, authorized to abate part of the purchase-money due from purchasers who have made improvements upon lots of land purchased as aforesaid at Harper's Ferry: *Provided*, That in his judgment such purchasers are legally or equitably entitled to such abatement: *And provided further*, That such purchasers shall application to the Solicitor for abatement within two months from the passage of this act, and, in case an abatement is made, shall pay the balance of the purchase-money due after deducting the amount abated within sixty days thereafter; otherwise, the debt to remain as if no abatement had been made.

SEC. 5. This act shall be in force from its passage.

Approved, June 14, 1878.

Mrs. Kirwan, the beneficiary mentioned in said bill, did not purchase the lot at said sale. It was not purchased by her of the United States, but at a judicial sale held on the 28th of September, 1876, under a decree of the United States district court for West Virginia, in a suit wherein the United States was plaintiff, and F. C. Adams respondent. At said last-mentioned sale Mrs. Kirwan purchased lot No. 2, in block No. A, for the sum of $685. Ten per cent. of this sum was paid by her at the time of the sale, and she gave her promissory notes for the balance, payable in one and two years with interest, which notes were secured by mortgage on said lot 2, in block A. Said last-mentioned lot, with other property, had been previously purchased from the United States in the year 1869 by the said respondent, F. C. Adams, and the proceedings in the United States district court for West Virginia, hereinbefore referred to, were instituted to foreclose the mortgage given by said Adams for the purchase money, the whole of which had remained unpaid.

The amount that Mr. Adams contracted to pay at the sale of 1869 was $1,655. The act of June 14, 1878, was to enable the purchasers from the United States, at the sale of 1869, to obtain relief from the exorbitant prices, as it was claimed, which those purchasers contracted to pay for the lots severally bid in by them. The act of June 14, 1878, does not cover Mrs. Kirwan's case. In August, 1878, Mrs. Kirwan filed with the Solicitor of the Treasury a petition asking relief under said act of June 14, 1878. The lot purchased by her, to-wit, lot 2, in block A, was appraised by the commissioners appointed under said act of June 14, 1878, as follows:

Present actual value, $250; value of improvements put on said lot since November 30, 1869, $150; estimate for use and occupation, or rent of said lot from November 30, 1869, to August, 1878, $500.

It seems that the amount which Mrs. Kirwan agreed to pay for the lot was greatly in excess of its value. Affidavits have been filed with your committee tending to show, and which, in the opinion of your committee, do show, that the present value of Mrs. Kirwan's lot without the improvements placed upon it by herself does not exceed $250. A number of affiants place its value as low as $200. Notwithstanding the passage by Congress of the act of June 14, 1878, for the relief of the purchasers at the sale made by the United States on the 30th day of November, 1869, your committee does not feel like considering the bill for the relief of Mrs. Kirwan favorably. It is stated in Mrs. Kirwan's petition, and your committee believe such is the fact, that all the other purchasers of lots at Harper's Ferry from the United States at the time aforesaid have been relieved and that she is the only purchaser now requiring this relief.

Your committee referred said bill to the Secretary of the Treasury. *It* was referred by the Secretary to the Solicitor of the Treasury, and

under date of April 26, 1882, the Secretary communicated to your committee the report of the Solicitor of the Treasury in regard to said bill. The Solicitor is of the opinion that the relief prayed for by Mrs. Kirwan in her petition, and provided for in said bill, should be granted. The Secretary of the Treasury concurs in this opinion.

Mrs. Kirwan purchased her lot at a public judicial sale. She was well acquainted with the property and the value thereof. No fraud was practiced upon her, the purchase was entirely voluntary upon her part. The amount involved is small, but the principle is so important and dangerous that we cannot recommend the passage of the bill.

We recommend that the bill be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 727.

# IN THE SENATE OF THE UNITED STATES.

JUNE 14, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1115.]

*The Committee on Pensions, to whom was referred the bill (S. 1115) granting a pension to Peter Brewer, having carefully examined the same, make the following report:*

That Peter Brewer enlisted in Company F, Twenty-ninth Regiment Indiana Volunteers, on the 29th day of January, 1862, to serve three years. Judging from the evidence, he was a victim of ivy-poisoning before enlistment; at any rate, there is no evidence on file to prove that this ivy-poisoning was contracted in the service in the line of duty. On account of said poisoning the said Brewer was furloughed soon after enlistment, and went to his home at South Bend, Ind., where, on July 4, 1862, while celebrating the Fourth, a cannon used for this purpose exploded, and caused the loss of his right arm. The Pension Office rejected the claim on the ground that the disability was not contracted in the service, and your committee are of the opinion that said rejection was correct, and recommend that the bill (S. 1115) be not passed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 728.

# IN THE SENATE OF THE UNITED STATES.

JUNE 14, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 623.]

*The Committee on Claims, to whom was referred the memorial of Ethan A. Sawyers, of Jefferson County, Tennessee, having had the same under consideration, make the following report:*

Mr. Sawyers presented his claim against the government to the Forty-first Congress, and the Committee on Military Affairs of the Senate, at the second session thereof, made the following report thereon:

Mr. ABBOTT made the following report, to accompany bill S. 1044:

*The Committee on Military Affairs, to whom was referred the claim of Ethan A. Sawyers, of Jefferson County, Tennessee, asking compensation for services as guide, scout, and recruiting officer, and for property taken and used by the Federal Army, and for services in destroying the rebel railroad communication and securing a large quantity of rolling-stock to the Union Army in 1863, make the following report:*

The claimant, Ethan A. Sawyers, presents in the record three different claims, to wit:

1. Claim for services during the greater part of the war as guide, scout, and recruiting officer.
2. Claim for corn, wood, bacon, and horses taken by and appropriated to the uses of the Federal Army.
3. Claim for services in penetrating the lines of the enemy for more than one hundred miles, under direction of Major-General Burnside, and destroying a bridge and telegraph wire, so as to cut off the communication of the enemy, and thereby save to the forces under General Burnside a large amount of rolling-stock.

The very valuable services rendered by Mr. Sawyers as a guide, scout, and recruiting officer, during a long period of the rebellion, are fully sustained by the evidence of Governor W. G. Brownlow, officers of the Army, and a number of loyal citizens of East Tennessee.

Governor Brownlow, who had personal knowledge of these services, says that, "as a pilot, spy, and scout, he proved himself a true friend to the Union men of Tennessee, and a valuable aid to the Federal Army." Officers of the Army testify that he "recruited soldiers for the United States," and they "bear testimony to his services to the Union cause during the war in assisting and recruiting for the United States Army from the beginning of the war, and expending his money and time, and also as a scout and guide for the Union Army."

It is also proved that his loyalty and unflinching devotion to the Union made him a special mark of enmity on the part of the rebels; that they destroyed his property and seized his stock and forage, and his life was constantly in danger. The amount of corn, hay, oats, horses, and wood taken by the rebels is proved by two witnesses, neighbors of claimant, to be worth $12,000.

During the absence of the claimant from his home in the service of the government, his corn, bacon, and wood were taken and used by the Federal Army, as is evidenced by the proof on file. The *amount of property* thus taken was worth $3,175.

The rule established by the Quartermaster-General in the preparation of claims requires that either receipts or vouchers shall be produced, or the affidavit of the officer who took the "stores" shall be filed by the claimant.

This rule Mr. Sawyers is unable to comply with, as he was absent from his home, in the service of the government, when his property was thus taken, and no receipt or voucher was left.

He makes affidavit himself and proves by his loyal neighbors that his property was taken and used.

Upon an examination of the evidence in regard to the services of claimant in destroying the railroad communication of the enemy, the committee find the following facts:

That in the month of August, 1863, General Burnside's command was at Mount Vernon, Kentucky, on the march to East Tennessee; that General Burnside employed the claimant, Sawyers, to proceed to the county of Jefferson, in East Tennessee, in advance of the Union forces, and to break up and destroy the railroad and telegraph communication of the enemy between Bristol and Knoxville, the latter place being in possession of the enemy.

The object was to secure to General Burnside's army the cars and other rolling-stock on that road held at Knoxville by the rebels, and to prevent them from running off the rolling-stock to Virginia upon the approach of the Federal Army.

Mr. Sawyers was directed to go to a bridge near New Market, and to destroy it at a given hour of the night. He proceeded upon his journey at great personal peril, and it is in proof that if he had been captured he would have been hung. He went through the lines of the enemy, and at the designated hour burned a bridge on the railroad and destroyed the telegraph-wire, and thereby prevented the enemy from running off into Virginia five locomotives, a large amount of rolling-stock, as well as a large amount of machinery, supplies, &c., which were thereby saved to the army of General Burnside, and which, he says, "secured the use and occupation of the road through East Tennessee at a time when the same was a matter of vital importance." General Burnside further says that he recommends "the claim of Mr. Sawyers, not to the generosity only, but to the *justice* of the nation."

Governor Brownlow says that the work of Mr. Sawyers "resulted in saving the rolling-stock of the road to the Federal troops, thereby enabling them to continue the occupation of East Tennessee."

These statements are also sustained by other officers of the Army, who state that if it had not been "for the use of the railroads and rolling-stock, it would have been impossibe to have supplied the Army, and great want and suffering would have ensued."

It will be remembered that the enemy occupied the whole of East Tennessee, and that General Burnside's approach was eagerly watched. It is also true that it was a matter of vital importance to General Burnside to secure, if possible, the cars, locomotives, and other rolling-stock in possession of the enemy at Knoxville, as without them, even if he should occupy East Tennessee, it would have been almost impossible to supply his army.

The claimant undertook a long and perilous journey, penetrating the lines of the enemy for more than a hundred miles, and says he was compelled to go on foot, and in the night-time and through the woods to avoid capture.

He accomplished the work assigned him and secured the rolling-stock to our Army, which afterward became the property of the government.

It is difficult to estimate the value of Mr. Sawyers's services. They cannot be estimated by the time required to perform the work. His life was in constant peril.

On the 5th day of September, 1865, General Burnside ordered the chief quartermaster, Army of the Ohio, to pay Mr. Sawyers $2,000, and adds, "Captain Morris will pay this from quartermaster's funds in his possession. The service was absolutely necessary and *worth ten times the cost.*"

Mr. Sawyers declares that he paid out $1,800 of this sum for assistance and necessary expenses.

Mr. Sawyers enjoyed the entire confidence of Governor Brownlow, and of Generals Burnside and Custer, and other officers of the Army, and the committee feel bound to give his statement credit.

The committee, therefore, in consideration of extraordinary services rendered by him at great peril, and the great advantages that resulted to the Army and to the government, and for his services as recruiting officer, guide, and scout, and for property taken and used by the Federal Army (aside from the large amount taken by the rebel army because of his devotion to the Union cause), recommend that Mr. Sawyers be paid for his property used by the Army, and for all of his services aforesaid, the sum of $15,000.

It will be observed that the committee fixed the amount due Mr. Sawyers at $15,000, and reported a bill appropriating that amount to

him. The House committee of the same Congress in its report fixed the amount at $20,000. The House, however, by a vote, on a division of the House, amended the bill reported by the committee by striking out $20,000 and inserting in lieu thereof $5,000, and thus the bill passed the two Houses (see Congressional Globe). Mr. Sawyers received the sum thus appropriated under protest, and now asks Congress to pay him the balance of the $15,000 found to be due him by the Senate committee, which amount he then agreed to accept in full payment of everything due him. If the services rendered by Mr. Sawyers and the property taken from him and used by the government were together reasonably worth $15,000, then the government should pay him the remaining $10,000. Any other action on the part of the government would be nothing less than repudiation of an honest debt.

From a careful examination of the facts your committee are satisfied that the committee of the Forty-first Congress fixed the amount due Mr. Sawyers upon a low estimate of the value of the extraordinary services rendered and the property taken, and they therefore report a bill authorizing the Secretary of the Treasury to pay to Mr. Sawyers the sum of $10,000 for his services as a scout and losses actually incurred, and recommend the passage of the same.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 729.

IN THE SENATE OF THE UNITED STATES.

JUNE 14, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of Isaac N. Osborn, praying for a pension, having examined the same, make the following report:*

That the Commissioner of Pensions, in a letter bearing date 23d of March, 1882, states that the claim of said Isaac N. Osborn is pending in that office, and awaits receipt of testimony called for September 12, 1879. Your committee are of the opinion that petitioner should prove his case at the Pension Office, and therefore recommend that the prayer of petitioner be not granted.

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H CONGRESS, } SENATE. { REPORT
lst Session. } { No. 730.

# IN THE SENATE OF THE UNITED STATES.

JUNE 14, 1882.—Ordered to be printed.

[r. FAIR, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1368.]

*Committee on Claims, to whom was referred bill S.* 1368, *have had the me under consideration, and beg leave to submit the following report:*

[essrs. Joseph M. Cummings, Hamilton I. Miller, and William Mc-erts were engaged in business in New York City in 1867, under the -name of Joseph M. Cummings & Co., as commission merchants and orters, doing a large and extensive business of over three million ars per annum.

1 September, 1867, Joshua F. Bailey, collector of internal revenue the district in which New York City is located, seized the ware-ses, books, papers, and stock; in fact, everything belonging to the ; most of the goods being in United States bonded warehouses and harge of an officer of the government.

ollector Bailey did not make any specific charge against the firm, made a general charge of fraud. Immediately on the seizure being le, Messrs. Cummings & Co. made a protest against the same and anded an investigation. Bailey informed them that the matter ld be attended to, and placed a number of officers in charge of the ehouses and refused to allow Cummings & Co. to transact any bus-s.

r. Cummings, not receiving any satisfaction from Collector Bailey, e to Washington and saw the Commissioner of Internal Revenue, desired to know what the charges were against his firm. The Com-sioner informed him that there were no charges on file in the depart-t against the firm, and ordered Sheridan Shook, who had in the ntime been appointed to succeed Bailey as collector, the latter hav-been suspended, to make an investigation.

thorough examination was made, in pursuance of that order, by a mittee consisting of one officer, Mr. Appel, from the department at shington, and Messrs. Palmer and Johnston, officers connected with internal revenue department at New York. Their affidavits, which on file with the papers in this case, and which have been carefully nined and considered by your committee, show that in every par-lar the goods, &c., in the warehouses corresponded with their books, they reported to the Commissioner that they were unable to find thing wrong, and that there had been no fraud on the part of Messrs. mings & Co.

Some time after, Mr. Bailey still insisting something was wrong, and still holding Messrs. Cummings & Co.'s goods and books under seizure, another examination was made by order of the Commissioner.

A thorough and exhaustive examination was made, a United States gauger was called in, and every package and barrel examined, and this second examination resulted exactly as the first one, and Messrs. Cummings & Co. were entirely exonerated.

An order was issued to release the goods, &c., from seizure, and turn them over to Cummings & Co.

These investigations extended over a period of about six months, entirely destroyed Messrs. Cummings & Co.'s business, the value of the goods seized had depreciated very much in price, and they were compelled to realize on them at a great loss, and they were completely ruined.

Contracts for the delivery of goods and for export that they had made they were unable to fulfill, and they were compelled to fail. Previous to this their credit was very high, having a large bank account and doing an extensive and lucrative business.

At the time of the seizure they had contracts outstanding which, if they could have had possession of the goods in the warehouses, would, they claim, have realized them a profit of over $200,000. From the evidence before the committee it would seem that Bailey's action in making the seizure was for the purpose of extorting money from Cummings & Co., and on their commencing proceedings against him in the courts he fled the country and has not since returned.

Mr. Cummings sets forth in an affidavit that the reason that himself and copartners allowed the time prescribed by law to pass in which to present their claim for investigation and adjudication to the Court of Claims is, that when their property was first seized the firm consulted Hon. Ethan Allen, a reputable lawyer of New York, who advised them first to institute legal proceedings against Joshua F. Bailey, the collector, for damages for the unlawful seizure, and thus establish by verdict of a jury the honesty of petitioners and the illegal and unwarrantable seizure of their property.

That, relying upon the said advice, and believing that Bailey would return, and being informed by Mr. Cornelius Runkle, said Bailey's attorney, that Bailey would return and meet all charges against him, they allowed valuable time to slip by.

In the mean time, owing to the seizure, the business of the firm was entirely broken up and destroyed, and they were obliged to and did make an assignment for the benefit of their creditors, and they were left destitute and penniless, and without any resources to institute any investigation or prosecute any claim through a suit at law.

Besides this, the deponent believed that no statute of limitations could run so long as Bailey was absent from this country.

Your committee have examined all the papers and affidavits, most of which are made by sworn officers of the government, and are of the opinion that Messrs. Cummings & Co. were unjustly dealt with, that there was no ground for the seizure, that it was illegal, and that they should be allowed to present their claim to the Court of Claims for adjudication thereon, and they therefore report back the bill and recommend its passage, with the following amendments:

In line 8 of the bill, after the words "empowered to," strike out the words, "bring a suit in said court against the United States for," and insert in lieu thereof the words, *to apply by petition to said court for the assessment of the actual damage sustained by them from.*

In line 16, after the word "officers," insert: *The United States shall appear to defend against said petition, and either party may appeal to the Supreme Court, as in ordinary cases against the United States in said court.*

In line 22, after the word "business," insert, *assessing the same on the same principles as if the suit had been against said Bailey, but allowing no exemplary or vindictive damages.*

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 731.

# IN THE SENATE OF THE UNITED STATES.

JUNE 14, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 2026.]

*The Committee on Pensions, to whom was referred bill S. 2026, having considered the same, submit the following report:*

Mrs. Mary E. Matthews, the applicant, is the widow of Edward S. Matthews, surgeon in the United States Navy, with the rank of lieutenant-commander, who died August 16, 1881, at the Rhode Island Hospital in Providence, while being taken by his friends to the Butler Asylum for the Insane to be treated for insanity.

The evidence shows that he had exhibited insane tendencies and frequent periods of mental aberration for several years; that he had from time to time been confined in different asylums to be treated for mental derangements; and satisfactorily establishes the fact that he had long been a man of unsound mind. He had frequently attempted to take the life of his wife and other friends by violence, and committed many acts during the last years of his life plainly establishing the fact that he was irresponsible.

The immediate cause of his death was an overdose of morphine, administered by himself. It is quite apparent from the evidence that it was not taken with an idea of self-destruction, although he was incapable of caring for himself at the time. He was being transported by his friends from Martha's Vineyard to the Butler Hospital. Arriving at Providence and stopping at the City Hotel with his father-in-law, he went to his room to retire for the night at about 5 o'clock p. m. Mr. Elliott (his father-in-law) then left him. After this, Surgeon Matthews left the room, went upon the street, and procured a bottle of morphine (or already had it upon his person), which drug he had been accustomed for many years to use as a remedy for chronic neuralgia, contracted in the service and line of duty. Shortly after he was seen by a policeman leaning against the fence, apparently ill. The policeman went to his aid, but Mr. Matthews immediately fell to the ground insensible. He was carried to the hospital, where he died the same night. A bottle of morphine was found upon his person, from which about ten grains had been taken, and the physicians certify that death was the result of an overdose of that poison.

Surgeon Matthews entered the service as assistant surgeon July 1, 1861, and he remained in the service till his death. He was the medical officer in charge of the Hatteras when she was sunk by the Alabama off Galveston in 1863. During the action he received an injury of the head from the concussion of a shell, from which he never recovered,

suffering terribly from chronic neuralgia in the brain occasioned by it until his death. He never was known to have neuralgia before. During the last few years of his life all parts of his body were afflicted by these racking pains. He was exposed to incredible hardships while a prisoner in the Alabama and in the West Indies before he was paroled. He was on duty in the San Jacinto when that vessel was wrecked off No Name Keys, and exposed on an uninhabited island without shelter, with but little clothing, and very short of food, for some weeks. He was very dangerously sick there also. The captain of the vessel, who was exposed no more severely, became insane from his sufferings and subsequently died; and his widow is pensioned in consequence thereof.

In 1875 Surgeon Matthews, while in the line of duty at New Orleans, testing horses for the marine ambulance, was thrown from the carriage, and striking upon the head, received a permanent injury, from which he never recovered, and which intensified his sufferings in the brain and head while he did live.

He was an officer of remarkable ability and skill. His bravery in action, and his heroism in the presence of danger, and his conspicuous patriotism were worthy of the high commendation which they received from his commanding officers, to which the records of the department bear witness.

He left no estate, not enough to pay his funeral expenses. His widow has a house in this city, but it is mortgaged for all it can be sold for, if not for more. She has two children, a boy of sixteen and a girl of thirteen, both of weakly constitution, and no means to support them or herself.

We recommend the passage of the accompanying bill.

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*Statement of Mrs. Matthews.*

I met Dr. E. S. Matthews, U. S. Navy, in November, 1864, just before he was ordered to the San Jacinto previous to her loss on No Name Keys. He appeared from my first acquaintance with him to be rather delicate, and complained before our marriage of the neuralgia. In December the San Jacinto was lost, and Dr. Matthews was exposed on an uninhabited island, with others, with no covering but canvas tents, to inclement weather, which aggravated his trouble, and he was sick for a long time, so that he could not write to me, and we knew nothing about the disaster until quite a long time after January, 1865. He obtained leave to come to Providence, and we were married on the 26th of February, 1865. From the very first he complained of neuralgia in his head and eyes, and suffered most intensely; he remained at home but fifteen days and then had his leave extended another fifteen days, when he returned to the East Gulf Blockading Squadron, and was stationed at Key West, under Dr. Gilchrist. There he had congestive chills and a slight attack of yellow fever, and was sent home on sick leave May 7, 1865. He came home in charge of a nurse, and was so feeble when he arrived at my father's house in Providence that he had to be assisted out of the carriage and upstairs, and I do not think he had good health after that; there was scarcely a day that he did not have to take some medicine to relieve himself from neuralgic pains; and since that time I think the habit which caused his death became fixed, though in my ignorance then of the real nature of the medicine, which I often gave to him myself at his request and by his direction, I did not know the danger he was in. Still I know that each day or so my dose was increased, until I finally asked the nature of the dose, and learning it was a preparation of opium (morphiæ sulph.), I became alarmed at the quantity and tried to prevent his using it altogether, but he only took a grain or two, and that allayed my fears, as I supposed he meant it was a very small quantity (I afterwards found out that an eighth of a grain was a large dose). He finally got better.

In July, 1865, he was ordered to the Pacific Squadron, and I joined him at Callao, Peru, in July, 1866. There he was attached to the Fredonia, and we lived on shore, No. 7 Calle Colon. He was, the next day after I arrived, taken with one of his terrible *headaches*, and called for his dose of morphine, which I gave him very reluctantly,

and, as his trouble continued and seemed to affect his mind, I called in Dr. Rudenstein, United States Navy, and a shore doctor, whose name I have forgotten. Dr. Rudenstein prescribed morphine for him, and said to me that it was the result of malaria in his system, probably contracted in the Gulf Squadron, and through exposure without proper clothing after the wreck of the Hatteras and the wreck of the San Jacinto. The congestive chills he had there, Dr. Rudenstein said, had impaired his system and really caused the neuralgia. So I was obliged to submit to his taking the drug, with, however, the promise that he would leave it off the moment he could do so. On March 14, 1867, he was ordered to the North Pacific Squadron, and I left Callao for the United States. In January, 1868, he was ordered home, and arrived 1st of February. I discovered then that he still had recourse to the morphine, and, though he tried to hide it from me, I discovered that he had been obliged to increase the dose very much, and from five to ten grains was a small quantity. He said he was obliged to do it in order to obtain the relief that a few grains had at first given him.

March 25, 1868, he was ordered to the Michigan, at Erie, Pa., and I, having read up a book upon the opium habit, commenced to try to cure him myself, and in my desire to substitute a less evil for a greater advised him to take chloroform (inhale it) in order to get relief from pain. Being on board ship during the day, I tried at night to press my cure upon him. The effect was terrible, for the chloroform finally made him a raving maniac, and so disturbed him, and he had such a craving for it that it was dangerous to be about in the house with him, and by applying to the captain of the ship, Jewett, for assistance, the doctor's state became known at the Navy Department, and the doctor was ordered before a retiring board for insanity. Getting him at last when free from the chloroform I told him his danger, and he left off trying to give up morphine and dropped the use of the chloroform. That quieted his mind at once, and he got over the danger which threatened him of being retired and sent to an insane asylum. He was detached November 5, 1868, and placed on waiting orders. From that time I considered the habit thoroughly formed, but never until his death did I give up the effort to have him cured. I paid the lawyer for defending him in the court of inquiry, which was the result of being ordered to the retiring board. During the following winter, up to the 8th of June, 1869, he went to a water-cure, where I joined him, and remained there by the advice of Fitz-Hugh Ludlow, trying to break off the habit—in vain, however, though his general health was much improved. While at the naval rendezvous, in 1869 and 1870, he still continued to use morphine, increasing the dose in spite of all my remonstrance, and, finally, while under waiting orders, he went to Dr. Day's asylum, then a little way outside of Boston, and I joined him, but, as before, his efforts were unsuccessful. He was then, January 25, 1871, ordered to the Ticonderoga. When in South America he still, in order to attend to his duties at all, continued to increase his dose of morphine, though he would occasionally make terrible efforts to overcome it, and fully realized the terrible hold the drug had upon him. He was very ill on the Ticonderoga while trying to leave it off, and his life was nearly despaired of for a time. Dr. Fassig attended him (he died out there), and Captain Badger took care of him himself. In February, 1874, he was detached, placed on waiting orders, and finally, thinking that a journey to Europe might enable him to overcome it, he applied for permission to leave the United States for six months. On his return the same hopeless condition continued, and we were ordered to Pensacola, Fla., through my efforts, hoping that a warm climate might help him, but in vain, and on May 28 he was detached and placed on waiting orders, and during that summer we went to all the sea-beaches, and tried everything to build up his health and make it possible to get along without his morphine. He went to the Mare Island hospital, but only remained a short time, being again detached and placed on waiting orders at his own request. Being in Washington, he was ordered to the Wyoming, but soon detached at his own request (and I believe nearly all these detachments were at his request), through my efforts, wishing to keep him under my own eyes and if possible effect a cure. Through the effects of the drug, which could no longer be concealed, it having gained such a hold upon him, and his mind and brain giving way to the long strain upon them, he came near being court-martialed, but by stating the case *truthfully* to Secretary Thompson, and begging him to let him make one more trial, the reports were pigeon-holed, and he was turned over to me, and I sent him to the country away from all temptations and tried to get him straightened up. Through my intercession he was ordered to the Lackawanna on a long cruise, as I hoped a long sea voyage would take him away from all those things that had harmed him.

I will say here that in the effort to try to get along with less morphine he would think, as I told him, any substitute was better than so dangerous a drug; in fact I do not think anything that I heard of and recommended to him he ever neglected to try, from chloroform to chloral, liquors, belladonna, or anything that could be used as a substitute or antidote. He spent a small fortune in buying a medicine of a Dr. Collins, and took over five thousand dollars' worth of this antidote with him in the Lackawanna, but I do not think it was anything more than a disguised preparation of morphine, and hearing of the death of a lady after ineffectually trying to cure herself

with it, I advised him to give it up, and on his return from the Lackawanna I advised him to go to Dr. J. L. Stephens, Lebanon, Ohio, to be cured. Dr. S. informed me that it was really impossible to cure him, his whole brain being so permanently impaired that he considered him a fit subject only for the insane asylum, and dangerous to be at large. He went to Dr. Stephens twice, and the last time Dr. Stephens told me he could not keep him and was obliged to let him go. He came east and went to my father's at the Vineyard, where he remained until the day before he died. Then my father thought it best to place him in the Butler Asylum for the Insane, and they both left Martha's Vineyard for Providence. My father left Dr. Matthews only a few minutes, when he went to consult some one about sending the doctor to the asylum, and during that time Dr. Matthews left the hotel, went out, and got a fresh dose of morphine. He had arrived at 60 grain doses three times a day, and this fresh bottle, from which he only took 10 grains, caused him to fall in a stupor in the street, and he was removed to the Rhode Island Hospital, where he died on the morning of the 16th of August, 1881, just at 25 minutes of 1 o'clock, a. m.

I think no one can read this terrible account and think that this habit was a pleasure to Dr. Matthews, or was acquired without cause. The fact of his exposure, congestive chills, and his condition at the time of and after his marriage prove it, together with his whole life of efforts to overcome the terrible habit, and can but arouse the sympathies of the most hard-hearted. That no money was spared to help him in his efforts, the present condition that I find myself in, which, much against my will, makes it obligatory upon me to apply for a pension or relief, shows without any further statement. This has been a sad undertaking for me, and I hope it may at least prove a successful one.

MARY ELLIOTT MATTHEWS,
*Widow of the late Surgeon Edw. S. Matthews, U. S. Navy.*

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 732.

# IN THE SENATE OF THE UNITED STATES.

JUNE 14, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1265.]

*The Committee on Claims, to whom was referred the bill (S. 1265) for the relief of G. E. W. Sharretts, have considered the same, and respectfully report:*

This is a bill to compensate Mr. Sharretts for labor in the preparation of a set of tables now used in the government offices for determining amounts due to officials and employés for different lengths of time, at different rates of salary. The claimant was employed in the Treasury Department, and his duties compelled him to make calculations of fractional parts of salaries which were due for periods of days or parts of months. As the official force grew more numerous, this labor became so great that he conceived the idea of compiling tables for the work. It very clearly appears from the statements of numerous disbursing clerks of the various departments that previous to Mr. Sharretts' compilation there were no tables for this purpose known to any of them. Mr. Sharretts occupied himself with this work, out of office hours, from 1862 to 1867. He made use of them in his own work, and as soon as it became known that he had them, they were in constant demand in manuscript form by disbursing clerks, and several transcripts were made of them. In 1867 they were published by order of the Secretary of the Treasury.

After the publication Mr. Sharretts was awarded $500 by the Secretary. Of this sum he was obliged to pay $250 for clerical assistance in the preparation of the work for the press. He had hoped for a similar allowance from the other departments, but, although the books are used extensively in all branches of the government service, he has received no compensation but that stated.

The fact that these tables have been a great saving to the government is shown by the statements of a number of disbursing clerks. The disbursing clerk of the Interior Department, speaking of the tables in his deposition, says:

> Without its use I should have found it impossible to have prepared the pay-rolls of his department without the assistance of an additional clerk.

Others state that in their various offices the tables have effected a great saving in clerk hire, and have insured accuracy.

We annex a letter of Senator Sherman, while Secretary of the Treasury, testifying to the value of the book:

TREASURY DEPARTMENT,
*March* 1, 1881.

Hon. GEORGE F. HOAR, *United States Senate:*

SIR: I have the honor to acknowledge the receipt of your letter of the 26th ultimo, inclosing Senate bill No. 1328, for compensation to G. E. W. Sharretts for his labor in preparing tables now in use by the *government*, and requesting any facts in the pos-

session of the department showing the value of said tables, and what amount should in justice and equity be allowed him for their use.

In reply I have to state that the salary tables known as the Sharretts tables have been used in this department since 1867 in the preparation of pay-rolls, upon which payments are made by officers charged with the disbursement of public funds to persons in the civil employment of the government. They are convenient in form and very useful to the departments; but it is difficult to make a just estimate of the proper compensation for their use. Their principal value is in the security afforded by uniformity of payment and the saving of time and labor. I would suggest that an equitable basis to estimate the value of such a compilation would be by the number of copies published and used by the government. I understand that the claimant has shown to the Committee on Claims that about 10,000 copies have been issued. I think that the amount due Mr. Sharretts might be fixed at a reasonable sum for each copy issued, but I must leave for the determination of Congress what should be deemed adequate compensation therefor.

Very respectfully,

JOHN SHERMAN,
*Secretary.*

It appears from entries in the Government Printing Office that 1,725 copies of the original book, and 7,000 of the revised book, which was a transcript of the original with the omission of portions made unnecessary by the abolition of the income tax, were printed for the use of the government; a total of 8,725.

In view of the extensive use and the great saving effected by this compilation, your committee think it but right that the government should remunerate the author by whose labor it has profited. We therefore recommend that he receive the sum of $5,000 as full compensation, and report the accompanying bill as a substitute for the one introduced.

We append as part of this report Mr. Sharrett's statement of his case.

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*Statement of G. E. W. Sharretts.*

WASHINGTON, D. C., *February*, 1882.

GENTLEMEN: For the information of the committee, and in support of the claim which I have made against the government, as set forth in Senate bill No. —, I would respectfully ask leave to present the following statement:

### PRESENT EMPLOYMENT AND DUTIES OF CLAIMANT.

I am at present a clerk in the office of the First Auditor of the Treasury Department, and have been so employed since the year 1857. A large part of my duties since that time has been, and still is, the examination and settlement of salary accounts of disbursing clerks and others. These accounts embrace the pay-rolls of every office of every department of the government at Washington, with two or three exceptions, and of all assistant treasurers in the United States, of the disbursing officer of the House of Representatives, and for a long time the disbursing officer of the Senate; the office of Public Printer, of the Librarian of Congress, and of the United States Coast Survey. It is my duty to see that each payment to each officer and employé is correct as reported by the various disbursing officers above referred to.

### NECESSITY FOR, BUT LACK OF, SALARY TABLES.

In the year 1861 the clerical force in the department began to increase, necessarily enlarging the size of the pay-rolls, and consequently increasing the number of intricate calculations. This increase continued until many of the rolls were doubled, and in some instances quadrupled, in size.

I made diligent search, through disbursing clerks and others, for tables that would relieve me or lighten my arduous labors, but without avail. There were no such tables in existence, and there was no method of determining the accuracy of the rolls except by actual calculations, which involved severe mental and physical labor and a great loss of time. It became a necessity to devise some means of relief.

### ORIGIN OF THE SHARRETT'S SALARY TABLES.

As a result of the condition of affairs stated above, I conceived the idea of calcu-ting and preparing tables for my individual use that would conform to the law gov-ning the payment of quarterly and fractional salaries, and I at once began the eparation of such a system of tables as would enable me to ascertain and to adjust alaries of all government officers of every grade, without subjecting myself to the noyance and delay incident to these lengthy calculations. This labor I performed fter office hours, at home, principally at night, and was engaged in its completion ntil the year 1867.

### USEFULNESS OF AND DEMAND FOR THE SHARRETT'S SALARY TABLES.

These tables I copied into a book and used them at my office for several years, and hen it was discovered that I had such tables in my possession they were eagerly sought fter by disbursing clerks and others, who borrowed and used them for the purpose of aking up their official rolls. They were considered so useful and desirable by these isbursing clerks that frequent requests were made for permission to print transcripts or their respective offices.

### PUBLICATION OF THE TABLES BY ORDER OF SECRETARY OF THE TREASURY.

With the assistance of Mr. R. H. Andrews, now a clerk in the office of T. J. Hobbs, sq., disbursing clerk of the Treasury Department, the tables were finally put in state or publication; and in 1867, by order of the Secretary of the Treasury, they were rinted in book form.

### ACCURACY AND EXTENSIVE USE OF SHARRETT'S SALARY TABLES.

This book was in constant daily use for over five consecutive years in every depart-ment of the government at Washington, in all the custom-houses of the country, and n the offices of all the assistant treasurers, without the discovery of an error in my alculations with a single exception, and that an unimportant one, which was cor-ected in the second edition of the book.

### REVISION OF TABLES.

When the income-tax on salaries was abolished in 1870, the tables showing the mount taxable, the amount of tax to be deducted, and the net amount to be paid, ecame unnecessary, and a revision of the work in that particular was ordered by the hief clerk of the Treasury Department. Mr. D. S. Green, a clerk in that depart-ment, was detailed to perform that labor, which he did during office hours, and at a alary compensation. I was directed by the Secretary to render Mr. Green any assist-nce he required.

### "RED BOOK," A TRANSCRIPT OF SHARRETT'S TABLES.

I cannot see that this revision in any way impairs my claim as the author of the ables now in general use, as the "Red Book," as it is called, is simply a transcript of my book, with the tax and per diem tables omitted, there being no longer any use or them.

### NUMBER OF COPIES PRINTED BY DIRECTION OF THE SECRETARY OF THE TREASURY.

The following extracts, made from the Government Printing Office entries, will how how many copies of the "Sharrett's Salary Tables" were printed by direction of the Secretary of the Treasury:

| | Copies. |
|---|---|
| Entry No. 181, [dated] May 24, 1867 | 525 |
| Entry No. 257, [dated] September 21, 1867 | 600 |
| Entry No. 127, [dated] January 29, 1868 | 600 |
| Total | 1,725 |

Of the revised book, which is known to the officers of the government as the "Red Book," there were printed, as per—

| | Copies. |
|---|---|
| Entry No. 334, [dated] June 25, 1872 | 2,000 |
| Entry No. 391, [dated] September 6, 1872 | 5,000 |
| Total | 7,000 |

This, added to the total above, makes 8,725 of these books published by the government.

This statement will also serve to show the increasing demand for this valuable work.

VALUE OF SHARRETT'S TABLES, AND SAVING TO GOVERNMENT FROM USE OF SAME.

In a letter addressed to the Honorable G. F. Hoar (see accompanying letter No. 14) Senator Sherman, the late Secretary of the Treasury, states that: "It is difficult to make a just estimate of the proper compensation for their use, their principal value being in the security afforded by uniformity of payment and the saving of time and labor."

Surely 30 cents per month would seem a low estimate for the use of one book in "the saving of time and labor."

The first edition of these tables numbered 1,725 books, and have been used for fifteen years, or one hundred and eighty months. Now, if one book saves 30 cents in one month in time and labor to the government, then in one hundred and eighty months one book saves $54, and if one book saves $54 in fifteen years then 1,725 books have already saved 1,725 times $54, which is $93,190, and claiming, as I do, that the "Red Book" is but a revision of my original book (and again I refer you to the letter of Secretary Sherman, in which he makes no distinction), the amount saved on this revised or second edition, which numbers 7,000 copies, upon the basis just stated would be $226,800, which added to the amount saved on the first edition makes a total saving thus far to the government of $319,990.

These tables are perfect and cannot be superseded by any other work so far as calculations are concerned, and as there are 8,725 books now in use they are saving annually $31,410, and will continue so to save as long as the present system of payments of salaries exists.

Let us examine the value of this book from a salary standpoint.

In the accompanying paper marked No. 5 C, Mr. E. M. Lawton, chief disbursing clerk of the War Department makes the following statement: "I have no hesitation in saying that I consider its use in this department as fully equivalent to the services of a high grade clerk constantly employed at such work."

In the accompanying paper, marked No. 8 C, Dr. Richard Joseph, chief disbursing clerk of the Interior Department states that: "Without its use I should have found it impossible to have prepared the pay-rolls of this department without the assistance of an additional clerk."

In the accompanying paper, marked No. 12 B, Mr. F. H. Stickney, chief disbursing clerk of the Navy Department, makes a statement as follows: "I consider your book of government salary tables invaluable, and equal to the assistance of a clerk for making up our pay-rolls, &c."

Nearly every paper on file with my claim shows the high estimation in which the tables are held by the disbursing clerks of every department, and it is certainly not unfair nor unjust to assume that if in any one department their use is equivalent to the services of a clerk they are equally valuable to all.

Now, in order to show again what the government has saved by the use of my tables, permit me to invite your attention to the following: The lowest grade clerk receives $1,200 per annum, and it cannot properly be questioned that employés at a less salary would not be employed upon such important work. If in one department the use of the tables has saved $100 per month, then for the fifteen years, or one hundred and eighty months, that the tables have been in use, they have saved one hundred and eighty times $100, which is $18,000. If $18,000 has been saved in one department, then in the eight departments, including the Department of Agriculture, there have been saved eight times $18,000 or $144,000, and this annual saving continues year after year. Nor does this complete the savings of the government. In the Capitol of the United States, in the custom-houses, in the several assistant treasurers' offices, and at every United States consulate, in short, wherever annual salaries are paid to civil officers, there these tables are employed at a saving of time and labor. This statement simply refers to the pecuniary advantage to the government from the use of these tables, and does not take into consideration benefits arising from the establishment through this medium of a uniform system of payments, thereby securing increased facilities and perfect accuracy in the settlement of accounts.

COMPENSATION BY TREASURY DEPARTMENT.

For the further information of the committee, and in justice both to it and to myself, I should state that my hope of compensation for the labor I had bestowed upon these tables lay in the fact that the several disbursing clerks of the departments at Washington, without hesitation, had agreed to recommend that a sum equal to whatever amonnt was paid by the Treasury Department ought to be paid by their *departments* for the use of the tables. The Secretary of the Treasury ordered the *work to* be printed; made it the authority for all future payments of salaries and

awarded but $500 for its use. After its publication I was surprised and disappointed to learn that the Secretary had misunderstood the terms of the agreement, and refused to allow me to dispose of the work to the other departments, thereby depriving me of the greater part of the compensation which I had every assurance and reason to expect would follow its publication. That the sum paid was insignificant and that the tables were of value is shown by the fact that the services of an official commanding a high salary, amounting, during the performance of his duty, to much more than $500, were secured for the purpose of making the few alterations required. When, in addition to this, it is known that I paid to Mr. R. H. Andrews $250 for clerical assistance and for the relinquishment on his part of all interest in the book (see accompanying paper marked No. 2 A) it would seem that the remaining $250 was but poor remuneration for the years of labor bestowed upon this work.

REASONS FOR MAKING CLAIM, AND AMOUNT OF SAME.

Permit me to state, in conclusion, that I believe myself to be the originator of these tables, having first conceived the idea; that there was no such work in existence at the time I commenced it, nor subsequently until the publication of my book; that the plan was original with me; that I carried it out without any assistance from any source, except that of Mr. Andrews, and that the government has received wholly and singly the full benefit of this valuable work without paying a proper compensation for its use and without remunerating me for the labor I performed in preparing it—labor which was irksome and arduous, consisting of tedious calculations, occupying me after office hours, at intervals, for five years.

It was not my purpose nor intention to dispose of this work to the Secretary of the Treasury for the sum of $500, but I expected to receive a much greater amount from the Treasury Department and a like sum from each of the other departments, which would have in some measure remunerated me. And now since the work has become of such general use and of incalculable value to the government, I feel justified in asking that I may be awarded the sum of $30,000, and respectfully but earnestly request that your honorable body recommend that the above-named sum be appropriated for that purpose.

Feeling confident that the papers herewith submitted will fully substantiate all the facts set forth in the foregoing,

I remain, very respectfully,

G. E. W. SHARRETTS.

The COMMITTEE ON CLAIMS, UNITED STATES SENATE.

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*List and scope of papers submitted.*

No. 1 A.—Mr. J. O. P. Burnside, disbursing clerk, Post-Office Department, commending value of tables.

No. 1 B.—Mr. J. O. P. Burnside, disbursing clerk, Post-Office Department, length of time tables have been in use.

No. 2 A.—Mr. R. H. Andrews, relinquishing claim to tables.

No. 2 B.—Mr. R. H. Andrews, concerning age and origin of tables.

No. 3 A, 3 B.—Mr. Bushrod Birch, disbursing clerk, Treasury Department, concerning value, age, and origin of tables and their saving to government.

No. 4 A, 4 B.—Mr. T. J. Hobbs, disbursing clerk, Treasury Department, concerning age, value, and origin of tables.

No. 5 A, 5 B, 5 C.—Mr. E. M. Lawton, disbursing clerk, War Department, concerning age, value, and origin of tables and their saving to government.

No. 6.—Mr. B. F. Fuller, disbursing clerk, Department of Agriculture, concerning value and saving by use of tables.

No. 7.—Mr. R. L. Hawkins, accountant, Coast Survey, concerning origin of tables.

No. 8 A, 8 B, 8 C.—Dr. R. Joseph, disbursing clerk, Interior Department, concerning age, origin, and value of tables and saving to government by their use.

No. 9.—Mr. A. J. Falls, disbursing clerk, Department of Justice, concerning value and origin of and saving from use of tables.

No. 11 A, 10 B.—Mr. John Bailey, financial clerk, House of Representatives, concerning age and origin of tables and saving to government by their use.

No. 11.—Mr. John W. Hogg, chief clerk, Navy Department, concerning value of tables.

No. 12 A, 12 B.—Mr. F. H. Stickney, disbursing clerk, Navy Department, concerning origin and value of tables and saving to government by their use.

No. 13 A, 13 B, 13 C.—Mr. R. C. Morgan, disbursing clerk, State Department, concerning value of tables, their origin and saving to government by their use.

No. 14.—The Hon. John Sherman, Secretary of Treasury, concerning value of tables and what compensation should be allowed for use of same.

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 733.

# IN THE SENATE OF THE UNITED STATES.

JUNE 15, 1882.—Ordered to be printed.

Mr. COKE, from the Committee on Indian Affairs, submitted the following

# REPORT:

[To accompany bill S. 1861.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1861) for the relief of A. C. Larkin, have had the same under consideration, and report it back to the Senate with a recommendation that it be passed without amendment; and they submit, as the grounds of this recommendation the facts and circumstances set forth in the following correspondence with the Department of the Interior:

DEPARTMENT OF THE INTERIOR,
*Washington, May 23, 1882.*

SIR: I have the honor to acknowledge the receipt of a letter from your committee of the 17th instant, inclosing S. 1861, "A bill for the relief of A. C. Larkin," with request for information as to Mr. Larkin's losses, and departmental action in the matter.

In reply, your attention is respectfully invited to the inclosed letter of the 22d instant from the Commissioner of Indian Affairs, to whom the subject was referred, and to copy of department letter of January 16, 1882, transmitting Mr. Larkin's depredation claim to the Hon. Speaker of the House.

Very respectfully,

H. M. TELLER,
*Secretary.*

Hon. HENRY L. DAWES,
*Chairman Committee on Indian Affairs, United States Senate.*

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DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, May 22, 1882.*

SIR: I am in receipt, by department reference of the 19th instant, of the letter of Hon. H. L. Dawes, chairman of the Committee on Indian Affairs of the United States Senate, inclosing a copy of Senate bill 1861, "for the relief of A. C. Larkin," and requesting such information as the office may have relative to said claim and the action of the department thereon, and in reply have to say that said claim was reported to the Hon. Secretary of the Interior on the 22d of March, 1881, with a recommendation that the same be allowed for $4,875.

It was transmitted to Congress January 16, 1882.

No new evidence has since been filed, and I know of no reason why the action of the office as stated in that report should be modified or changed in any way.

The letter of Senator Dawes, together with the printed copy of the bill, are herewith inclosed.

Very respectfully, your obedient servant,

E. L. STEVENS,
*Acting Commissioner.*

Hon. HENRY M. TELLER,
*Secretary of the Interior.*

DEPARTMENT OF THE INTERIOR,
*Washington City, January* 16, 1882.

SIR: In compliance with the terms of the seventh section of the act approved May 29, 1872, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1873, and for other purposes," I have the honor to transmit herewith the claim of A. C. Larkin, amounting to $11,150, for compensation on account of depredations committed by Cherokee Indians.

A letter (copy inclosed) dated the 22d day of March, 1881, from the Commissioner of Indian Affairs, reporting the nature, character, and amount of said claim, is accompanied by the evidence presented in support thereof, and shows the action taken by that officer under the rules and regulations prescribed by this department for the investigation of such claims; all which is respectfully submitted for the consideration of Congress as contemplated by said seventh section of the act aforesaid.

Very respectfully, your obedient servant,

S. J. KIRKWOOD,
*Secretary.*

The Hon. SPEAKER *of the House of Representatives.*

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DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, March* 22, 1881.

SIR: I have the honor to submit for your consideration, and such action thereon as you may deem advisable, a claim of Augustus C. Larkin for $11,150, on account of depredations alleged to have been committed by the Cherokees on the 26th of October, 1874.

The complaint, testimony, and correspondence are very voluminous. The previous proceedings are somewhat irregular and needlessly complicated, by reason of the alleged claim having been under the management of several different attorneys at as many different periods. The claim was originally filed in this office on September 3, 1875, and is for feloniously and forcibly taking and driving away from the claimant's possession, by citizens of the Cherokee Nation, a quantity of live stock belonging to him, and, by false pretenses and promises to release said stock, obtaining from him, under such promises, the sum of $500 in cash, while the claimant and his stock were lawfully in the Indian Territory, and is based upon section 2156 of the Revised Statutes of the United States, and is supported by affidavits of several persons cognizant of the facts set forth in the complaint.

On the 4th of September, 1875, this office, by letter of that date, transmitted this claim to George W. Ingalls, then United States agent at Muscogee, Ind. T., directing him to take action thereon agreeably to the requirements of the department rules and regulations, and report proceedings thereon as early as practicable.

To this letter no reply was received by this office. On December 11, 1876, an office letter was addressed to S. W. Marston, the successor of Mr. Ingalls, calling his attention to the letter of September 4, 1875, and directing him to report what action had been taken in the matter.

By letter from Agent Marston of 22d December, 1875, this office was informed that the papers in the Larkin case could not be found in his office, to which letter this office replied on the 6th of April, 1877, directing further search to be made.

By letter of April 10, 1877, Agent Marston reports to this office that he had found the papers, and had sent them to Mr. Larkin for some necessary amendment, and asks instructions; and in reply thereto office letter of April 16, 1877, was sent to the agent, advising him that upon the return of the claim to him by Mr. Larkin he should carefully examine it, and have it verified by competent witnesses, and present the case to the proper nation or tribe under the rules and regulations of the department, and report the action had thereon.

On the 13th day of November, 1877, the papers setting forth the claim were submitted to the Cherokee authorities, by the agent in person, by handing them to the Cherokee chief, Charles Thompson, at his office in Tahlequah, and while the Cherokee council was in the first week of its session. He then informed Agent Marston that he would at once lay the same before the council and accompany it by a special message, which he did, and the matter was thereupon referred to a special committee for examination and report thereon.

No action appears to have been taken thereon by said committee during the session of the council, which adjourned at the expiration of the thirty days limited by law for holding its sessions.

Owing to this inaction, and the fact that the reasonable time allowed by section 2156 of the Revised Statutes of the United States for making satisfaction for depreda-

tions would expire before reparation could be made, and construing such inaction as a neglect and refusal on the part of the nation to make the satisfaction sought for, the agent and Mr. Larkin demanded the return of said claim and accompanying papers, in order that the agent might make report of his action to this office, that such further steps might be taken as should be proper to obtain satisfaction for the injury complained of.

Omitting as unimportant much of the correspondence that ensued between the agent and the chief of the Cherokee Nation and his executive secretary, in the effort of the agent to secure the return of said papers, I herewith submit copies of such correspondence as I deem pertinent, being—

1st. Letter from S. W. Marston, United States Indian agent, to Charles Thompson, February 4, 1878.

2d. Letter from Charles Thompson to S. W. Marston, February 11, 1878.

3d. Letter from S. W. Marston to Charles Thompson, February 23, 1878.

4th. Letter from William Rasmus, executive secretary, to S. W. Marston, February 27, 1878.

5th. Letter from Charles Thompson to L. B. Bell, senate clerk, March 5, 1878.

6th. Letter from S. W. Marston to William Rasmus, executive secretary, March 12, 1878.

7th. Letter from William Rasmus, executive secretary, to S. W. Marston, March 15, 1878.

8th. Letter from Charles Thompson to S. W. Marston, April 30, 1878.

And marked respectively Exhibits 1 to 7, both inclusive.

The papers having been finally delivered to Agent Marston, they again came before this office, and on the 28th of August, 1878, Chief Thompson sent to this office letter of that date (copy herewith, Exhibit 18) requesting a certified copy of the papers relating to said claim, that said certified copy might be used instead of the originals in again placing the matter before the national council, and protesting against any action upon said claim by this department until the council of the nation should have ample opportunity to finish its investigation thereof. Complying with the request of the chief, a certified copy of said papers, which are voluminous, was on November 8, 1878, transmitted by this office to Charles Thompson, chief of the Cherokee Nation.

Nothing being heard from the Cherokee council or the chief of the nation after the transmission of said certified copy, a letter was sent by this office to Chief Thompson, and dated March 19, 1879, of which Exhibit No. 9 (herewith) is a copy, again calling attention to the Larkin claim, and insisting upon final action thereon.

Still receiving no reply to the letter last above referred to, this office, on the 23d July, 1879, again wrote to Hon. Charles Thompson a letter of that date (copy herewith, Exhibit 10), notifying him, as chief of said Cherokee Nation, that unless attention should be given to the matter of said claim, and an answer filed within thirty days from that date, this office would proceed to final action thereon.

Within the thirty days above referred to, a lengthy communication was received by this office, dated June 18, 1879, signed by W. P. Adair and Daniel H. Ross, Cherokee delegates, which is mostly, in effect, a plea to the jurisdiction of this office, protesting against its entertaining such jurisdiction, and again insisting upon the return of the papers to the national council for adjudication; and alleging that "the papers before you" (the Commissioner of Indian Affairs) "relating to this claim show conclusively, without other evidence which we are prepared to produce, that the claimant was in the Indian Territory (Cherokee Nation) in open violation of our treaties and the laws of the United States," &c.

Having assumed jurisdiction of this matter by reason of the long-continued delay and neglect of the Cherokee council to take proper action in the matter, as authorized so to do by section 2156 of the Revised Statutes, control of the claim and the right of this office to adjudicate it was retained; and on the 10th of September, 1879, in reply to the said last-mentioned communication, a letter was addressed to W. P. Adair and Daniel H. Ross, delegates, &c., requesting them to forward the "other evidence" referred to in their communication within forty-five days. The answer to this request, dated October 4, 1879, is from Charles Thompson, chief of the Cherokee Nation, and contained a letter from Hon. W. H. H. Clayton, United States district attorney for the western district of Arkansas, addressed to Chief Thompson, in reply to a letter written by him to said Clayton, and containing his *ex parte* statement, from recollection only, of the testimony given by Larkin on the trial in said court of three of the persons engaged in said depredation, who were indicted and tried on a *criminal* charge as instigators and parties concerned in the depredation, and two of whom were convicted and imprisoned.

This statement, under the established rules of evidence in court, is not only inadmissible as testimony, but is objectionable as expressive of an opinion formed from a *recollection* of matters testified to on said trial.

Under all the facts and circumstances hereinabove stated, I have the honor to report that after an examination of the testimony on file in this office in support of the

said claim of Augustus C. Larkin against the Cherokee Nation for compensation for the depredation alleged in his complaint, and having declined to remit the papers therein to the national council, I herewith submit, for your consideration and action, the following finding of fact, and my conclusion of law thereon:

1. I find from the evidence that said Augustus C. Larkin is a white man and a citizen of the United States.

2. I find from the evidence that on or about the 26th day of October, 1874, the date of the depredations hereinafter referred to, he was the owner of the following-described personal property, to wit: 24 calves (Durham); 21 yearlings (Durham); 18 two-year-old half-breeds; 33 cows; 3 yoke of oxen; 1 thoroughbred bull; 2 Durham bulls; 1 span mules; 1 two-year-old mule; 1 horse; 1 mare; and $500 in money.

3. I find from the evidence that all of said property was wrongfully and feloniously taken and driven away from the possession of said claimant by James M. Bell, Andrew Barker, James Barker, and others, their confederates (whose names are unknown), all of whom are members of the Cherokee Nation and reside therein.

4. I find from the evidence (authenticated copies of records of the United States district court for the western district of Arkansas) that said James M. Bell, Andrew Barker, and James Barker were severally arrested, indicted, and tried in said court for the larceny of the above-described property of said Larkin, and that said Andrew Barker and James Barker were duly found guilty and sentenced by the court as follows: The said Andrew Barker to confinement for one year in the penitentiary of West Virginia, and the said James Barker to the penitentiary of Arkansas for the term of one year.

5. I find from the evidence that after said property was so feloniously taken away, the said James M. Bell, Andrew Barker, and others, members of the Cherokee Nation, falsely claimed to be acting as deputies under authority of one Joseph Lynch, sheriff of one of the districts in the Cherokee Nation, and, under a promise to restore said property, compelled said claimant to pay to one William Booth the sum of $500, under pretense that the same was for the use of the Cherokee Nation. That said claimant paid said sum of $500 under protest, but that his property was never restored to him.

6. I find from the evidence that the said Augustus C. Larkin was rightfully and lawfully residing in the said Indian Territory at the date of said depredations, and for four years previously had been such resident, and that he had paid his tax up to and including the year 1874 to the proper officer of said nation, which went into the treasury of the nation.

7. I find that the headmen of the Cherokee Nation were repeatedly called upon in reference to said depredations, as well by the proper Indian agent as by the claimant, and they were urged to take the necessary action thereon for settlement thereof; and that although it is now more than five years since the committing of said depredations, they have refused and neglected, and still neglect and refuse, to take any steps in the matter, notwithstanding section 2156 of the Revised Statutes of the United States requires such settlement within one year from the date of complaint.

8. I find that the value of the stock at the time it was taken was the sum of $4,375, which added to the amount of $500 previously taken from said claimant make together the sum of $4,875.

9. As a conclusion of law, I find that the said Augustus C. Larkin is entitled to recover from the said Cherokee Nation, in consideration of the foregoing facts, the sum of $4,875; and should provision be made therefor by Congress as contemplated in section 2098, Revised Statutes, the amount should be charged to any fund in the Treasury of the United States standing to the credit of the said Cherokee Nation.

The papers in this case are herewith transmitted.

Very respectfully, your obedient servant,

THOM'S M. NICHOL,
*Acting Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 734.

# IN THE SENATE OF THE UNITED STATES.

JUNE 15, 1882.—Ordered to be printed.

Mr. MCDILL, from the Committee on the District of Columbia, submitted the following

# REPORT:

[To accompany bill S. 419.]

*The Committee on the District of Columbia, to whom the subject was referred, submit the following report:*

Congress, by act approved February 23, 1881, authorized the construction of a bridge across the Potomac at or near Georgetown. The point was to be selected by the Secretary of War, the bridge to be a substantial iron and masonry bridge with approaches, and $140,000 was appropriated therefor; but this was to be the maximum cost, and was to include the cost of a substantial bridge across the canal, and any and all approaches. It was further provided that a draw of sufficient width to permit the free passage of vessels navigating that part of the Potomac River should be constructed in said bridge, unless it should be constructed upon, or by the side of, or up the river from the present aqueduct and at the same or greater elevation above the water.

The Secretary of War was authorized, in his discretion, to purchase the aqueduct bridge now crossing the Potomac River at Georgetown, provided the same could be purchased for $85,000, and a good title acquired, allowing the Alexandria Canal Company, or its present lessees, to maintain at their own cost a canal-aqueduct of the same width and depth as the one now in use, and to attach or suspend it to the bridge, the construction, attachment, and maintenance of such canal-aqueduct to be determined by the Secretary of War, but without cost or liability to the United States or the District of Columbia. In accordance with the terms of said act, the Secretary of War, determining that it was for the public interest to purchase the bridge at the site of the present aqueduct bridge, instituted proceedings to procure the necessary rights, franchises, and privileges. The parties claiming to be the parties in interest refused to accept the terms of the act. The fee of the property is in the Alexandria Canal Company, but it is held under a ninety-nine years' lease by the Alexandria Canal, Railroad, and Bridge Company. The lessees showed a willingness to treat for a relinquishment of their franchise, but the lessors, by a formal resolution, adopted at a meeting of the stockholders in Alexandria, May 16, 1881, refused to "accept the act of Congress." It was then determined to select a new site for the bridge, and, after due consideration, one was selected at a point known as the Three Sisters, above the aqueduct bridge. Specifications were prepared and proposals invited for building said

bridge. The lowest bid received was for the exact amount appropriated, and proposed the construction of a bridge insufficient in strength. The Secretary of War submits a detailed estimate for a substantial bridge at the Three Sisters, showing that it will require for the bridge proper, approaches, and necessary inspection and tests of work, an additional sum of $61,000; for what is known as a "deck bridge," and for a through bridge, which is considered preferable, an additional sum of $19,000, or a total additional sum for a through bridge at the Three Sisters of $80,000. In 1836 the city of Alexandria was a large holder of stock in the Alexandria Canal Company, and on the 27th December, 1836, presented a memorial to Congress complaining of injustice done to the city of Alexandria by introducing the Chesapeake and Ohio Canal within Georgetown and the city of Washington, when it should have had its terminus where it first met tide-water, and asked Congress either to accept a transfer of its stock upon certain terms and conditions, or upon the pledge of its stock, or in such other way as might seem most just and equitable, to advance such sum as would enable the completion of the undertaking. In response to this memorial and prayer, Congress, by act of March 3, 1837, authorized the Secretary of the Treasury to loan $300,000 to the canal company in order to complete the canal to Alexandria. And to secure the payment of the loan the corporate authorities of the town of Alexandria were required to deposit the stock held by them in the Alexandria Canal Company in the hands of the Secretary of the Treasury, with proper and competent instruments and conveyances in law to vest the same in the Secretary of the Treasury and his successors in office for and on behalf of the United States, to be held in trust upon the same terms and conditions as the stocks held in the Chesapeake and Ohio Canal by the several cities of this District, were required to be held in and by virtue of the act approved on the 7th day of June, 1836, entitled "An act for the relief of the several corporate cities of the District of Columbia."

By that act, viz, the "Act for the relief of the several corporate cities of the District of Columbia," the Secretary of the Treasury was directed to assume on behalf of the United States, and discharge to the holders of the evidences of debt contracted and entered into between the cities of Washington, Alexandria, and Georgetown and certain individuals of Holland, the entire obligation of paying said debts with the accruing interest thereon, together with the interest due and unpaid, according to the contract. Before doing so, however, the corporate authorities of the cities were required to deposit the stock of the Chesapeake and Ohio Canal Company, held by them respectively, in the hands of the Secretary of the Treasury; and it was provided that the Secretary of the Treasury might, at such time within ten years as might be most favorable for the sale of such stock, dispose thereof at public sale and reimburse to the United States such sums as may have been paid under the provisions of the act, and pay over any surplus to the cities.

While the $300,000 was advanced by the United States, it is understood to be the fact that the deposit of stock was never made, and it is certainly a question worthy of consideration whether or not the lessors, who by vote refused to accept the proposition of the Secretary of War to pay for the franchises, rights, and privileges enjoyed by them, do not in fact hold property which belongs to the United States.

In view of these facts, it seems proper to proceed by condemnation to take possession of the piers and aqueduct bridge, leaving to the courts the decision as to whom the money paid by way of condemnation *belongs*. There is a very general belief that the courts will eventually

declare the United States to be a very large holder of interest in the property to be condemned. The corporation of Alexandria has 3,500 shares of the stock of the Alexandria Canal Company, which was pledged to the United States for a loan of $300,000. It seems quite probable that the United States owns more than a majority of the whole of the stock, and that those who are now objecting to the use of the piers are not the owners of a single share, and in such case there can be no doubt as to the right and power of the United States to take and use the piers for the purposes specified in the bill.

It is not believed that the erection of a bridge at the point known as the Three Sisters is at all to be desired. The approaches to said bridge on the Virginia side would be very difficult of construction, and it would require a very large sum of money to put the bridge and approaches in complete order.

By the expenditure of not exceeding $100,000, the United States can gain possession of the aqueduct bridge, and with the $10,000 appropriated for repairs in the act of February 23, 1881, the citizens of Georgetown and of Virginia will have been provided with a free bridge which will answer all present purposes, and located at the proper site for such bridge.

The committee therefore recommend the passage of Senate bill 419, with the following amendments:

By adding after the words "Secretary of War," in line 42, the following words: "Provided that the Secretary of War may, if, in his discretion, he deems such course advantageous to the United States, cause the condemnation proceedings to be stayed after the valuation is determined, without paying in the amount of the award; and in such case no liability shall attach to the United States beyond taxable costs, nor in any event shall there be paid under the provisions hereof more than $100,000, which sum, or so much thereof as may be necessary, is hereby appropriated."

Also by adding after the word "assessment," in line 46, the following: "And the preliminary expenses of presenting the petition and of advertising."

Also by adding after the words "United States," in line 47, the following: "And a sufficient sum of money for paying the same is hereby appropriated out of any money in the Treasury not otherwise appropriated."

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 735.

# IN THE SENATE OF THE UNITED STATES.

JUNE 15, 1882.—Ordered to be printed.

Mr. BUTLER, from the Committee on the District of Columbia, submitted the following:

# REPORT:

[To accompany bill S. 947.]

*The Committee on the District of Columbia, to whom was referred the bill (S. 947) to declare the true intent and meaning of the act entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia," &c., approved June 16, 1880, have had the same under consideration, and submit the following report:*

The Committee on the District of Columbia, of the House, have considered a bill having in view the same objects as Senate bill 947, and submitted a favorable report upon the same to the House. The following is the report of the House committee:

That the committee recommend the passage of the substitute herewith submitted.

The bill is intended to remove an ambiguity which plainly exists in section nine of the act entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved June 16, 1880.

This section authorizes the redemption by the Treasurer of the United States of all the outstanding board of audit certificates, *with the interest accrued upon said certificates*, in what are known as the 3.65 bonds of the District of Columbia, which are authorized by section seven of the act entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874.

This board of audit consisted of the First and Second Comptrollers of the Treasury, and were required to adjust and audit all the outstanding indebtedness of the District, as enumerated in said act, and to issue certificates to the respective creditors of the District. These certificates bear the legal rate of interest, viz, six per centum, as adjudged by the supreme court of the District in a number of actions brought upon certain of said certificates by the lawful holders thereof. (See William Ballantyne *v.* District, Law No. 1719; Dixon & King *v.* District, &c.)

The Treasurer of the United States does not question the correctness of these decisions, nor does he refuse to pay that rate of interest, so far as he feels authorized by the ninth section of the act aforesaid of June 16, 1880. Since the passage of this act authorizing the delivery of 3.65 bonds at par for these certificates, with accrued interest, Congress has authorized the Treasurer to sell these bonds, and to redeem in money the certificates, whenever for the interest of the District to do so; in other words, when he can realize more than par for the bonds, as has been the case for a year past.

The ambiguity in the section is found in the last line, which directs the Treasurer "*to detach all coupons from said bonds up to the date of such certificates.*" To be more comprehensive, it may be well to state that, by the act of June 20, 1874, the bonds were to run fifty years, *all* dated August 1, 1874, and interest payable semi-annually. Under this clause of said section, the coupons must be detached which accrued due between that date of the bonds and the date of the certificates. Of course the inference is warranted that coupons which had not become due were to be delivered with the bonds to the holders of the certificates, and, therefore, by the letter of the section, double interest would be paid the holders, to wit, six per cent., the accrued interest, and the interest coupons upon the bonds. This could not have been the intention of

Congress, and therefore the accounting officers were compelled to determine wl course they would pursue. They have taken the responsibility of being governed the last clause of said section, and have refused to *redeem the accrued interest*, as plai required by said act. The committee are of opinion the ambiguity of the sect should be removed, and therefore recommend the passage of the substitute herew reported.

As good and sufficient reasons for this action, they beg leave to say—

First. That the supreme court of the District have uniformly given judgment the amounts due, with interest at 6 per cent., whenever suit has been brought u any of the certificates.

Second. That Congress has uniformly appropriated money to pay such judgme

Third. That it is RIGHT, *and this Congress should never require any other incentiv action*. The creditors holding these certificates furnished supplies and perfor labor for the District. They were, in many cases, compelled to contract debts. pay these debts they borrowed money at high rates of interest, and it would be o *exact justice* if they were reimbursed the interest they have been compelled to pay reason of the failure of the District to comply with its obligations to them. It is g *injustice* to ask them to take less than the legal rate of interest.

Fourth. The writer of this report was a member of the committee of confere which engrafted this section upon the act of June 16, 1880, and he knows that it the fixed purpose of that committee to provide for the payment of legal interest u said certificates to the date of conversion. How the ambiguity crept in he is not a so state, but it may have been that, in transcribing from the minutes of the commit to the report, the word "certificates" was used instead of the word "conversio and in the hurry and bustle of the last days of the session it was not noticed.

That committee was composed of persons too well versed in law to be guilty of absurdity of asking the creditors of the District to take a less amount for their cla than the courts would award them, and too strongly impressed with a sense of just to require them to take less than was absolutely *right*. The District nor is the gove ment a pauper, that it cannot afford to pay its creditors *all* they have the legal rig to demand.

Your committee adopt this report, and recommend the passage of t accompanying bill as a substitute for the Senate bill 947.

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TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 736.

# IN THE SENATE OF THE UNITED STATES.

JUNE 19, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1680.]

*The Committee on Pensions, to whom was referred the bill (S. 1680) granting a pension to Ann Leddy, have had the same under consideration, and report:*

That Ann Leddy is the widow of Thomas Leddy, who was captain of Company B, Sixty-ninth Regiment New York Volunteers.

The soldier was wounded in left arm at Fredericksburg, Va., December 13, 1862; also was wounded at Malvern Hill June 1, 1862, in right and left breast. The physician who attended him in his last sickness certifies:

That he has been the family physician of the soldier since 1866, and treated him during his last illness and at the time of his death; that he was wounded in the left arm and over the heart. He always complained of the wound in the arm, which made him quite nervous; also the wound over the heart caused him much uneasiness. He died at Fernandina, Fla., October 13, 1873, the immediate cause of his death being disease of the heart and lungs, which caused nervousness and weakness and general debility.

No other evidence was presented to the Pension Office. And the widow's claim was rejected on the ground that the evidence did not show the cause of death had its origin in the service. Additional evidence was filed with the committee by affidavit of James A. Reed, who says that he is by profession a "doctor of medicine in the city of New York," having "graduated as such at University of New York in 1848, and has since been actually engaged in his profession."

That in 1862 he was the assistant and acting surgeon in the Sixty-ninth Regiment State Volunteers of New York, and was in said service at the battle of Fredericksburg, Va., in the month of December of that year, when said battle occurred; that he was acquainted with Thomas Leddy, a captain in said regiment, and who participated in said battle; that said Leddy was then and there wounded by a gunshot in his left arm, and also in the breast by a fragment of a shell; that deponent then and there attended said Leddy in his professional capacity; that the wound in the arm produced partial paralysis, which continued to the time of his death in Florida about eight years since; that this difficulty, together with the wound in the breast, which caused continuous spitting of blood, was the cause of Captain Leddy's death, as deponent verily believes.

Dr. Reed was the medical attendant of Leddy for several years after he left the Army, during which time Leddy was an inmate of St. Vincent's Hospital, New York City, in which he was a patient under treatment for his wounds and the disabilities incident to them.

From these additional facts your committee are clearly of the opinion that the cause of Leddy's death did have its origin in the service, and therefore they recommend that the bill do pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 737.

# IN THE SENATE OF THE UNITED STATES.

JUNE 19, 1882.—Ordered to be printed.

Mr. VOORHEES, from the Committee on the Library, submitted the following

# REPORT:

*The Joint Committee on the Library, to whom was referred the memorial of John A. Graham, praying for compensation for two years' service rendered as disbursing agent of the Library of Congress in* 1875 *and* 1876, *submit the following report:*

That the services were rendered in full, as claimed, appears from the letter of the Librarian of Congress; also, that no compensation for the years to which the claim relates, nor any part of them, has been made to Mr. Graham, nor to any other person. The bar to the payment heretofore has been the provision of law which prohibits the payment of two salaries to the same person; but it is shown that Mr. Graham performed the service of keeping the accounts connected with the Library disbursements at times not interfering with his official duties. The committee are of the opinion that the memorialist is equitably entitled to compensation, at the same rate received by him previously to 1875, namely, $400 per annum. They report an amendment to the sundry civil bill to cover that amount.

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Hon. JOHN SHERMAN, UNITED STATES SENATE,

*Chairman Joint Committee on the Library:*

SIR: I have the honor to make application for payment of salary for two years as disbursing agent of your committee for the fiscal years 1875 and 1876.

I was for fifteen years Assistant Register and chief clerk of the Register's Office, and went out of office by my voluntary resignation in 1876.

During all these years I never lost any time except eighteen days, and these eighteen days were lost by reason of sickness. I never took a day's leave of absence. I was appointed by the Joint Committee upon the Library the agent of the committee for the purpose of paying accounts drawn by the committee upon me; and in that capacity acted some eight or ten years. During all that time I never lost a day from the discharge of these duties as disbursing agent, which were done at times never interfering with my other official duties.

I disbursed, as such agent, over half a million dollars without a loss of a cent. For this service I was paid $400 per annum for all my time save the two years from July 1, 1874, to June 30, 1876, preceding my resignation.

I respectfully refer to the letter of A. R. Spofford, Librarian, and indorsement of R. W. Tayler, First Comptroller, showing the justice of this my claim for the services before mentioned, and earnestly ask that this claim for $800, due by contract and virtue of services rendered, may be put into the proper appropriation bill, that the same may be discharged and paid.

I am, most respectfully, your obedient servant,

J. A. GRAHAM.

FEBRUARY 18, 1882.

WASHINGTON, *January* 22, 1878.

DEAR SIR: In pursuance of your request, I herewith take pleasure in certifying that your discharge of the duties of disbursing agent of the Library of Congress, continued now through many years, has always been prompt, accurate, and satisfactory, the disbursements never having been delayed from any cause. As to the last two years of unsettled salary due you as disbursing agent, before your resignation as Assistant Register of the Treasury, I can only say that the service was performed by you throughout both years; that the compensation is justly your due, no one else having received the same, nor any part thereof; and, as you were appointed agent by the Joint Committee on the Library, it is equitable that you should be paid.

Very respectfully,

A. R. SPOFFORD.
*Librarian of Congress.*

Col. J. A. GRAHAM,
*Disbursing Agent.*

Mr. Graham discharged the duties of disbursing officer of the Library faithfully and promptly, and I do not know of any reason why he should not be paid for the services agreeably to the practice of Congress previously adopted, or that may appear just.

R. W. TAYLER,
*Comptroller.*

JANUARY 22, 1878.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 738.

IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4914.]

The Committee on Pensions, to whom was referred the bill (H. R. 4914) granting a pension to Emeline Pink, have fully considered the same, and recommend that the bill do pass. They adopt as their own the report of the Committee of the House of Representatives on Invalid Pensions (No. 1053), which fully and correctly sets out the case:

The claimant, Emeline Pink, is the widow of Charles Pink, late corporal of Company B, Sixth New York Heavy Artillery. The deceased soldier was appointed corporal September 15, 1862. He was wounded at the battle of Spottsylvania, Virginia, May 19, 1864, and was mustered out July 3, 1865. He was then transferred to the Veteran Reserve Corps for gunshot wound in the back, the ball entering the right hip, passing inward and backward, and emerging through the upper part of the corresponding nates. In May, 1864, after fatiguing marches and heavy duties for several days, and being exposed to the sun, the deceased was overcome with heat, and his brain became affected. He was also afflicted with noises in the head, pressure upon the brain, and deafness; acted in an abstracted manner and showed symptoms of sunstroke. No improvement appeared in his case, and he died about July 12, 1866. His death was occasioned immediately by being upon the track of the Harlem Railroad, and being struck and killed by a locomotive. At the inquest the jury stated as follows:

"The jury further believe that the said Charles Pink was at the time of the accident laboring under some derangement of mind."

The deceased soldier was in good health and strength when he entered the service. His habits were good, and no indication exists that the accident occurred by reason of intoxication.

The deceased never made application for a pension, and no application has been presented to Congress in behalf of his widow previous to this one.

It is apparent that the accidental death of the deceased was the result of derangement of the mind, arising from the effect of the sunstroke before mentioned, and was the direct effect of the injury received by the soldier while in the line of his duty.

This committee are, therefore, of opinion that the widow should be granted a pension, and recommend the passage of the accompanying bill.

rH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 739.

# IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1882.—Ordered to be printed.

r. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1277.]

*e Committee on Pensions, to whom was referred the bill (S. 1277) granting an increase of pension to William Heine, have had the same under consideration, and report:*

That William Heine was captain of Company I, First Maryland olunteers; was mustered into the service December 9, 1861, and disarged December 7, 1862, upon his own resignation, which was tend-ed for private reasons. Afterwards Captain Heine was again mus-ed into the service as colonel of the One hundred and third New rk Volunteers, May 15, 1863, for three years, which term he served t. He filed declaration for pension December 4, 1878, which was anted at the rate of $10 per month, commencing December 8, 1862, June 6, 1866, and from the latter date $20 per month, deducting from ay 15, 1863, to March 17, 1865, inclusive. The bill proposes to give m an increase to $50 per month from June 6, 1866.

This case, as developed by the evidence filed, is very peculiar, and esents some very curious if not anomalous points.

Captain Heine claims that he was disabled by the enemy's cavalry the 30th of June, 1862, at Chickahominy Swamp, while carrying a ghly confidential dispatch from Major-General Dix to General George McClellan, in the attempt to do which he was ridden down by the rst Virginia Cavalry, two of his escort killed, and himself taken pris-er; that the injury received by the horses' hoofs, anxiety for the fety of his dispatches, which he finally ate up, threw him into a dan-rous nervous excitement, which, on account of the lack of medical re in Libby Prison, increased. The war records show that he was nt on detached duty, with an escort of one non-commissioned officer d six men, to carry dispatches to General McClellan. This escort rted June 28, 1862, and was captured June 30. He was exchanged gust 19, and on the 23d of that month is reported in the post hospital Fort Monroe, "suffering from the effects of internal injuries received the battle-field of 30th of June last, and from the effects of confine-nt in the vitiated air of Richmond prisons." Heine resigned Decem-r 7 for private reasons, which he now says was that paralysis had so ected his right arm and shoulder that he was unable to use a sword, t, as already stated, re-enlisted, and was mustered into the service ain, as colonel of the One hundred and third New York Volunteers, ay 15, 1863, for three years.

Captain Heine was examined December 12, 1878, by a board of surgeons of the city of Washington, D. C., and again January 27, 1879, by a board composed of entirely different surgeons. The first report says:

An examination of the shoulder and arm shows no change from the normal condition, one shoulder being as perfect as the other; the arms are the same size and length. If the arm was ever dislocated the reduction was perfect. He flinches on pressure over the middle dorsal vertebræ, and says it pains him. His shoulders and back are completely covered with old scars, where wet cups had been applied at some time; that the man suffered when the cups were applied is certain, but whether such pain was the result of an injury received in the service we cannot say. He is a fine specimen of humanity, and it is hard to believe that he suffers in any way, yet he may; there are no objective signs. The truth is, that an examination in the case develops nothing tangible, but if he was injured as claimed and if he can show continuous treatment then we think it may be accepted that he suffers as claimed. He seems truthful and gives a straightforward story. The paralysis which he claims does not exist, but if he proves that the neuralgia and pain in spine exist to the extent claimed he should be rated at one-half.

The second report is as follows:

He claims that he suffers from an injury to right shoulder and to left leg, and also disease of the nervous system, and says motions of right shoulder are impaired, with loss of power in the right arm and left leg.

There seems to be slight tenderness on pressure over spinous process of four upper dorsal vertebræ with numerous cicatrices from cups in this region, but he is strong and very muscular, abundantly nourished, with great development of adipose tissue; no evidence of any organic lesion; motions of none of the articulations interfered with, and we are unable to discover any evidence whatever of disability from the causes alleged. Has a small inguinal hernia on the left side retained by truss. One-half.

The first medical reviewer to whom this case was sent in the Pension Office indorses upon the papers the following:

A very careful review of this case makes it clear to my mind that the claimant is *not now* suffering from *any degree* of disability arising from the injury to the shoulder claimed, or any result of it. (*Rejected.*)

The case then went to a medical referee, who reports as follows:

In admitting this claim all doubt is given the claimant. That he was disabled during the period covered by the affidavits of Drs. Meyer, Wolf, and Erdemann there can be no doubt, and that that disability was caused by congestion (by pressure) of the spinal meninges or medulla is indicated by the number of cicatrices over the spinal column. It is true there is confused diagnosis. Dr. Meyer says: "*Successfully* treated * * * for a paralysis of right upper arm." Dr. Wolf says: "* * * for paralysis progressiva, particularly appearing with weakness of the under extremities." Dr. Erdemann says: "* * * for paralytical affections in the legs. and fainting periods."

The claimant—whom I well recollect—when before the office board did not claim any affection of the legs, but limited his disabiliity to pain, &c., in right arm and about the shoulder.

The city board January 29, 1879, failed to find any evidence of disability.

The truth is that in the class of cases of which this is representative, it is *impossible* to make a diagnosis, and therefore to determine the existence or not (positively) of a disability, excepting upon the statements of the subject.

Whether pain is suffered or not up to a certain point, *must* depend upon the statements of the subject. It is only when it is claimed to exist in a severe degree and continuously that the physique will afford evidence of its existence. Continuous—even when not very severe—pain of necessity interferes with the functions of all the organs, and must be followed in time by lesion of substance and *loss of weight*. So, too, pains of a limb cannot be determined excepting by the statements of the subject, for he only can state whether there is lack of usual sensation and of normal motive power.

A man may be utterly paralyzed in legs or arms and yet present to the looker on no sign at all of ill health, because the processes of primary and secondary digestion are not in the least interfered with. It is therefore wholly possible that this claimant shall suffer want of power in his arm and leg as he claims, and yet present the physique he does of almost abnormal, if not of wholly abnormal, obesity.

Upon this report Heine was entered upon the pension-rolls, rated as before stated.

One of the singular circumstances in the prosecution of this case is that the attorney who prepared or presented his application, R. A. Colby, of the National Home near Fortress Monroe, Va., in less than two months after withdrew from the case, stating among other things, the following reasons therefor:

1st, Said Heine alleges as his disability, paralysis of the right side and arm, the sequence of complicated dislocation of the right shoulder. A careful observation of the man and his muscular movements during the period of his being a beneficiary of this home satisfies me that his declaration is false, and coupled with this fact that he will balance 250 pounds avoirdupois, that he is a high liver and predisposed to corpulency, and I am well satisfied that he is in no respect a sufferer from paralysis, *local or general.*

From a careful review of the evidence and history of this case, your committee are of opinion that this man is now drawing all the pension his disabilities deserve, if not more than he deserves, and therefore your committee recommend that the bill do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 740.

# IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill H. R. 5377.]

*The Committee on Military Affairs, to whom was referred the bill H. R. 5377, have duly considered the same, and submit the following report:*

Your committee referred the bill to the Secretary of War, and received from him the following communications, letters from Secretary of War and from Chief of Ordnance, and list of trophies, and where stored, to wit:

WAR DEPARTMENT,
*Washington City, June 16, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, inclosing bill H. R. 5377, and asking for the views of this department upon the propriety of surrendering or donating to the Saratoga Monument Association, as therein provided for, certain cannon captured from General Burgoyne at Saratoga, now on hand at the Watervliet Arsenal.

In reply, I beg to transmit herewith a report from the Chief of Ordnance on the subject dated the 10th instant, and the accompanying list of the trophies of the battle of Saratoga in his charge, showing their condition and the places where stored, which was also requested by you.

The War Department has no information whatever concerning the Saratoga Monument Association. The cannon referred to are now stored at the Allegany, Frankford, Rock Island, and Watervliet Arsenals, and the United States Military Academy, and they are undoubtedly safe in the custody of the United States.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. F. M. COCKRELL,
*United States Senate.*

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ORDNANCE OFFICE, WAR DEPARTMENT,
*Washington, June 10, 1882.*

SIR: I have the honor to return herewith letter of the Hon. F. M. Cockrell, United States Senator, of 30th ultimo, transmitting the bill (H. R. 5377) authorizing certain cannon to be delivered to the Saratoga Monument Association, and to inclose herewith a statement giving the number and description of the trophies of the battle of Saratoga, now on hand in the United States.

Very respectfully, your obedient servant,

S. V. BENÉT,
*Brigadier-General, Chief of Ordnance.*

The HON. SECRETARY OF WAR.

*Trophies of the battle of Saratoga, now on hand in the United States.*

ALLEGHENY ARSENAL.

One 24-pounder bronze boat-howitzer, inscribed, "Surrendered by the Convention of Saratoga, Oct. 17, 1777"; on breech, "2: 3: 17"; condition good, except the vent, which is enlarged—chambered.

One 3-pounder bronze gun, 2.9 inches bore, inscribed, "Surrendered by the Convention of Saratoga, Oct. 17, 1777"; on breech "1 > 3 > 17"; on base ring, "Verbruggen Fecerunt 1775"; condition, vent enlarged, axis of bore curved one inch to the left, bore worn.

FRANKFORD ARSENAL.

One 24-pounder bronze howitzer, bearing the following marks: Ends of trunnions, right, "No. 2"; left, "240"; near muzzle, a floral device; on the chase "Surrendered by the Convention of Saratoga, Oct. 17, 1777"; near the trunnions, a ducal crown and letter M; on the breech, a regal crown and monogram of George II; cascable, "16 < 3 > 15"; band of cascable, "A. Schalch fecit, 1748." Bore, 5.81 inches; diameter, 60″ long. Vent, spiked.

ROCK ISLAND ARSENAL.

One bronze gun, 3.75 inches diameter of bore, with swell muzzle, astragal and fillets. On the chase is engraved: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." Over the trunnions is the letter L, surrounded by a ribbon with buckle on which is an effaced inscription, not now readable. On the reinforce is the British crown and the monogram ²GR. On the base ring is engraved "W. Bowen fecit, 1775," and on face breech "4–3–18." On one of the trunnions is cut "No. 46." The gun is otherwise well preserved.

WATERVLIET ARSENAL.

One 24-pounder howitzer, caliber 5.68; length of bore 5 feet 2 inches. Marks on chase: "Surrendered by the Convention of Saratoga, October 17, 1777." Marks on breech: "A. Schalch fecit, 1748." Marks on trunnions: No. 5, 255. Embellished with crown and monogram "GR."

One 12-pounder gun, caliber 4.62: length of bore 6 feet 1 inch. Marks on chase: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." "Tria juncta uno." Marks on breech: "Honi soit qui mal y pense." "Dieu et mon droit." "W. Bowen fecit, 1760." Marks on trunnions: "No. 29." Embellished with crown, rampant lion, and British arms. Dragon handles.

One 12-pounder gun, caliber 4.62; length of bore 6 feet 1 inch. Marks on chase: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." "Tria juncta in uno." "A Rege Victoria." "Tria juncta uno." Marks on breech: "Honi soit qui mal y pense." "Dieu et mon droit." "W. Bowen fecit, 1760." Marks on trunnions: "No. 35." Embellished with crown, rampant lion, and British arms. Dragon handles.

One 12-pounder gun, caliber 4.62; length of bore 6 feet 1 inch. Marks on chase: "Aut nunquam tentes aut perfice." "The Right Hon'l Lord George Sackville, Lt. Gen'l and the rest of the principal officers of His Majesty's Ordnance." "Surrendered by the Convention of Saratoga, Oct. 17, 1777." Marks on breech: "Honi soit qui mal y pense." "Dieu et mon droit." "W. Bowen fecit, 1759." Marks on trunnions: "No. 14." Embellished with crown and British arms. Dragon handles.

One 12-pounder gun, caliber 4.62; length of bore 6 feet 1 inch. Marks on chase: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." "Tria juncta in uno." "A Rege Victoria." "Tria juncta uno." Marks on breech: "Honi soit qui mal y pense." "Dieu et mon droit." "W. Bowen fecit, 1760." Marks on trunnions: "No. 38." Embellished with crown, rampant lion, and British arms. Dragon handles.

One 8-inch howitzer, length of bore 2 feet 10 inches. Marks on chase: "Honi soit qui mal y pense." "Dieu et mon droit." Marks on breech: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." "Dieu defend le droit." "W. Bowen fecit, 1758." Marks on trunnions: "No. 5." Dragon handles.

One 8-inch mortar. Marks on chase: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." Marks on breech: "W. Bowen fecit, 1758." Marks on trunnions: "4-1-25." Embellished with crown and monogram "GR."

One 24-pounder Calhorn mortar, caliber 5.68. Marks on chase: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." Embellished with crown and monogram "GR."

MILITARY ACADEMY.

One bronze mortar, caliber 4.75. Inscription: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." Crown G³R. Weight 0-3-4.

One 3 pounder bronze gun. Inscription: "Surrendered by the Convention of Saratoga, Oct. 17, 1777." "J. and P. Verbruggen fecerunt A. 1775." Broad arrow.

ronze mortar, caliber 4″.75. Inscription: "Surrendered by the Convention of a, Oct. 17, 1777." Crown G²R. Weight, 0-2-26.
ronze mortar, caliber 4″.75. Inscription: "Surrendered by the Convention of a, Oct. 17, 1777." Crown G³R.
ronze mortar, caliber 4″.75. Inscription: "Surrendered by the Convention of a, Oct. 17, 1777." Crown G²R.
ronze mortar, caliber 4″.75. Inscription: "Surrendered by the Convention of a, Oct. 17, 1777." Crown G³R.
ronze mortars, caliber 5″.5. Inscription: "Surrendered by the Convention of a, Oct. 17, 1777." Crown G²R.
ronze mortars, caliber 5″.5. Inscription: "Surrendered by the Convention of a, Oct. 17, 1777." Crown GR.
ronze howitzer, caliber 8″. Inscription: "Surrendered by the Convention of a, Oct. 17, 1777." "Honi soit qui mal y pense. Le Dieu et mon droit. Honi mal y pense. Dieu defend le droit. W. Bowen fecit, 1758." Handled.

ONGRESS, } SENATE. { REPORT
Session. } { No. 741.

IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1882.—Ordered to be printed.

RRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1800.]

*mmittee on Military Affairs, to whom was referred the bill (S. 1800) or the relief of Mary A. Lee, respectfully report as follows:*

Mary A. Lee is the widowed mother and sole heir at law of Wal- ee, deceased, late a second lieutenant in the Twenty-eighth Reg- f Michigan Volunteers; that Lieutenant Lee was promoted from ks to be a second lieutenant in this regiment, was duly commis- and entered upon duty as such on the 22d day of September, nd so continued till the 2d day of March, 1865, when he was in arrest for alleged disobedience of orders; that he was tried by iartial on the 3d day of April, 1865, found guilty, and sentenced ishiered and to forfeit all pay and allowances due and to become n; that said sentence was approved in a general order from head- s Department of North Carolina, bearing date July 14, 1865.
he 10th day of August following, General Ruger, commanding partment of North Carolina, who had approved the sentence of rt-martial, attempted by a department order to remit so much of tence as related to the forfeiture of pay and allowances. This ne upon the written request of the colonel of the regiment who ected the charges to be filed. The accounting officers of the ry, and also the Judge-Advocate-General of the Army, very cor- lecided that the order of General Ruger was a nullity.
charge against Lieutenant Lee was disobedience of orders in re- to report to Company E of his regiment for duty with that com- hich then had but one officer present, and also a breach of his in leaving the company quarters while in arrest. It seems that an erroneous notion that under the regulations he could not be ed from his own company (D) and required to serve in another. each of arrest appears to have been rather technical.
ems that he had never received any pay from the term of his pro- and muster as second lieutenant, September 22, 1864, and so his pay for nearly a year of good service has been forfeited. We his refusal to obey was the result of a mistake as to his duty. ns to have asked his commanding officer to explain to him how er could be justified under the regulations, and did not get an ation, but an arrest. We do not say this to justify, but only to , his offense. He received while under arrest a promotion as firs t

lieutenant, but was not mustered under that commission, though there is evidence that before the sentence was promulgated he was relieved from arrest, and it is said that he did duty as a first lieutenant for a time.

The committee have not thought it necessary to incorporate in this report the letter of the Adjutant-General, which sets out the proceedings of the court, but we insert here the letter of the Secretary of War:

WAR DEPARTMENT,
*Washington City, May 29, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant, inclosing Senate bill 1800, to pay Mary A. Lee, mother of Walter J. Lee, late second lieutenant Twenty-eighth Michigan Infantry Volunteers, the amount of pay and allowances of a second lieutenant of infantry from September 22, 1864, to April 10, 1865, and the pay and allowances of a first lieutenant of infantry from April 10, 1865, to August 10, 1865.

In reply to your request for information and suggestion in regard thereto, I beg to invite your attention to the inclosed report from the Adjutant-General of the Army, dated the 24th instant, to whom the subject was referred.

It appears from this report that the offense of Mr. Lee was not regarded as very heinous from the fact of the department commander's attempt, when it was too late, to restore him the pay and allowances forfeited by sentence of general court-martial. But if it should seem proper to Congress to grant Mrs. Lee the pay and allowance forfeited by sentence of general court-martial, he should only receive pay as second lieutenant, from the fact as reported by the Adjutant-General that the records fail to show that Walter J. Lee was recognized or rendered service as first lieutenant of the Twenty-eighth Michigan Volunteers, and he should not receive pay beyond July 31, 1865—up to which date the records show that he was present with his company, and which date his name is dropped from the records as dismissed.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. BENJ. HARRISON,
*Of Committee on Military Affairs, U. S. Senate.*

Upon these facts the committee advise the passage of the bill, with an amendment, limiting the pay to that of a second lieutenant for the whole period.

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TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 742.

# IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1882.—Ordered to be printed.

r. HARRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

*e Committee on Military Affairs, to whom was referred the petition of John Kennedy, a soldier of Company H, First Regiment of Wisconsin Volunteers, praying to be relieved from a charge of desertion borne on the rolls against him, respectfully report as follows:*

A reference of the papers was made to the Secretary of War, from iom the following letter has been received:

WAR DEPARTMENT,
*Washington City, May 26, 1882.*

IR: Acknowledging the receipt of your letter of the 16th instant, inclosing petition John Kennedy for the removal of the charge of desertion standing against his ord as a member of Company H, First Wisconsin Cavalry, also draft of a bill for relief, I have the honor to inform you that the same was duly referred to the Adant-General of the Army, who reports that, upon investigation of this man's case his office, the charge of desertion against him was found to have been erroneously de, and that it has accordingly been removed.

The inclosures to your letter are herewith returned.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. BENJAMIN HARRISON,
*Of Committee on Military Affairs, United States Senate.*

As the relief prayed for has been given by the action of the War Dertment, the committee ask to be discharged from the further considtion of the petition.

[TH CONGRESS, 1st Session. } SENATE. { REPORT No. 743.

# IN THE SENATE OF THE UNITED STATES.

JUNE 20, 1882.—Ordered to be printed.

[r. HAWLEY, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill H. R. 713.]

*he Committee on Military Affairs, to whom was referred the bill (H. R. 713) granting to the Springfield Street Railway Company the right to lay tracks in Mill street, in Springfield, Mass., respectfully submit the following report:*

The facts in this case are set forth in the House report as follows:

The Springfield Street Railway Company is a corporation created by the laws of assachusetts, and owns and operates a horse railroad in the city of Springfield, in assachusetts.

During the summer of 1879 said company, desiring to extend its tracks over a por-on of Mill street, so called, described in the bill, applied for permission, through Col. G. Benton, commandant at the Springfield Armory, to the Secretary of War—the rtion of Mill street referred to being upon lands owned by the United States in con-ction with the National Armory, but used as a public way in continuation of the ng line of one of the public streets of said city.

Colonel Benton, in transmitting the company's petition, informed the Secretary of ar that the proposed extension of the railroad would be of great convenience to the ıblic and to persons having business at the government shops, and recommended at authority be given to lay the track, on condition that it should be removed with-t injury or expense to the United States whenever such removal should be requested the officers of the national government.

In pursuance thereof the Secretary of War granted the permission, but upon the fur-ıer condition that said company should apply to Congress at its next session for the ecessary legislation to confirm the privilege.

The committee are fully satisfied that the extension of the railroad, as set forth in e bill, will prove of great advantage to the government in affording cheap and ready ansportation for the employés at the armory workshops, and, as the interest of the overnment will be fully protected in the bill, they recommend its passage.

Your committee adopt said report as their own.

The bill is reported back to the Senate, with the recommendation that do pass.

'H CONGRESS, } SENATE. { REPORT
1st Session. } { No. 744.

# IN THE SENATE OF THE UNITED STATES.

JUNE 21, 1882.—Ordered to be printed.

. DAWES, from the Committee on Indian Affairs, submitted the fol lowing

# REPORT:

[To accompany bill S. 2060.]

*e Committee on Indian Affairs, to whom was referred the bill (S. 1009) o authorize the sale of timber on certain lands reserved for the use of he Menominee tribe of Indians, in the State of Wisconsin, have consid-ered said bill, and report thereon as follows:*

The Menominee tribe of Indians occupy a reservation in Shawano unty, Wisconsin. Some portion of this reservation is covered with luable pine timber. Some tracts of this timber are so situated that ey are very liable to be injured or destroyed by fire. In the last few ars the forest fires have destroyed a portion of said timber, and it is y a question of a few years when from the same cause most of the ue of the timber will be lost to the Indians. The trees in other cts are old, have attained their growth, and are now going to decay. ere can be no question but it will be for the interest of the Indians t the timber be sold on these tracts.

The bill authorizes the Secretary of the Interior to cause to be ap-ised and sold the timber on such portion of the reservation as may deemed for the interest of the tribe, excepting the sixteenth sections, ich have been reserved to the State of Wisconsin for school purposes. rovides, further, that the timber shall be appraised by two or more nterested appraisers, to be selected and appointed by the Secretary he Interior, in eighty-acre lots according to the public survey; pro-ed, that such appraisal shall not include any growing tree or trees ess than twelve inches in diameter at the butt, and shall be made n the express understanding that the tops and refuse of timber to be shall be reserved for the use of the Indians.

The bill provides further, that the appraisal shall state the quantity, ality, and value of the pine timber growing on each lot. It provides ther, that this appraisal shall be returned to the land office at Men-a, Wis., and shall be subject to public inspection for at least sixty s before the day appointed for the sale of the timber.

ection 2 of the act provides that the timber apprai sed shall be ad-tised for sale by notice of not less than two months, to be published t least three newspapers in said district; that it shall be offered at lic auction at such suitable place as may be designated by the Sec-ry of the Interior within the Green Bay Agency to the highest bid-, in lots not exceeding eighty acres, but shall not be sold at less than appraised value.

The bill provides further that all of said timber remaining unsold at the expiration of one year after it shall have been offered, shall be again advertised and offered at public auction, as previously provided, at not less than the appraised value thereof, and that in all cases the timber shall be sold for cash only.

Section 3 provides that if the Secretary of the Interior shall deem it for the best interests of the Indians he shall authorize the Indian agent to employ the Indians to cut all or any portion of said timber into logs, and haul the same to the bank of the rivers, in lieu of selling the timber as otherwise provided for, said logs to be sold in such manner as the Secretary of the Interior shall determine.

By section 4 the sum of $5,000 is appropriated out of the Treasury to pay the expenses connected with such appraisal and sale. These expenses are to be reimbursed to the Treasury from the first proceeds of the sale of the timber.

Section 5 provides that this act shall be and remain inoperative until full and satisfactory evidence shall have been placed on the files of the office of the Commissioner of Indian Affairs that the sales of timber authorized by the act have the sanction of the tribe, evidenced by orders or agreement taken in full council.

It was decided by the Supreme Court of the United States, in the case of Beecher *vs.* Weatherby (5 Otto, p. 517), that the State of Wisconsin is entitled to every section 16 within the limits of the said Menominee Reservation.

It is in accordance with this decision that the bill excepts the sixteenth section from the operations of the bill. The bill leaves the whole matter in the hands of the Secretary of the Interior. The timber is to be sold or not sold as he determines. The original bill was referred to the Commissioner for Indian Affairs. He suggested various amendments. These amendments have been incorporated in a new bill. The committee therefore recommend that the original bill be indefinitely postponed, and they report a new bill from the committee and recommend the passage of this new bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 745.

# IN THE SENATE OF THE UNITED STATES.

JUNE 21, 1882.—Ordered to be printed.

Mr. HAMPTON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1745.]

*The Committee on Military Affairs, to whom was referred the bill (S. 1745) to authorize the President to restore Tenedore Ten Eyck to his former rank in the Army, and to place him upon the retired list of Army officers, beg leave to report:*

That an examination of the papers shows the following facts: Captain Ten Eyck entered the volunteer service as a private, and was commissioned as a captain in the Eighteenth United States Infantry in 1862. In 1863 he was brevetted major, United States Army, for gallant conduct, and at the battle of Chickamauga he was taken prisoner. After his exchange he rejoined his regiment, serving with it on the western frontier until 1871, when he was dropped from the rolls under the provisions of the act of Congress of July 15, 1870. As a general rule the committee have not recommended the restoration to the Army of officers dropped under the operation of this act, and they make an exception in the case of Captain Ten Eyck only for the following reasons: In 1870, while on sick leave, and a confirmed invalid on account of diseases contracted in the line of duty, he was ordered before a medical board for examination, with a view to retirement. This board, composed of two Army surgeons, while admitting the chronic character of the disease from which Major Ten Eyck was suffering, reported him as, in their opinion, fit for duty. But his health has not been restored, and certificates from a large number of prominent physicians, laid before the committee, show that from the time of his examination to the present he has been a great sufferer and a confirmed invalid. This fact indicates that the examining board were mistaken in the opinion expressed, that Major Ten Eyck would be fit for duty. Subsequent events have shown that his health had been permanently impaired at the time of his examination, and that he can look for no improvement in the future. In view of these facts your committee regard this case as an exceptional one, where justice requires that Major Ten Eyck should be placed on the retired list. They therefore recommend the passage of the bill as amended by adding in the twelfth line the words "And provided further that he shall receive no pension from and after the passage of this act."

TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 746.

# IN THE SENATE OF THE UNITED STATES.

JUNE 21, 1882.—Ordered to be printed.

DAWES, from the Committee on Indian Affairs, submitted the following

# REPORT:

[To accompany bill S. 1959.]

*: Committee on Indian Affairs, to whom was referred the bill (S. 1959) ranting the right of way to the Arizona Southern Railroad Company rough the Papago Indian Reservation in Arizona, report:*

'hat said right of way is very necessary to said company, they hav-, under the law, secured the right of way for their whole line except this small section of about 8 miles, which runs through the said ervation. The Indians occupying the reservation are not only satis- but anxious to have said railroad built on the route as surveyed, it ng much to their advantage. The agent in charge of said Papago ians, as well as the receiver and register of the land office nearest said reservation, recommend the granting of the right of way as ed. The Commissioner of Indian Affairs and Secretary of the Inte-, after full examination of the question, see no objection to the pass- of the bill after being amended as suggested by them.

Ve therefore recommend the passage of the bill after amendment follows:

Strike out all of section 1 after the word "and" in line 13, and insert uch compensation as may be fixed by the Secretary of the Interior paid to him by the said railroad company, to be by him expended for benefit of the said Indians."

he said bill was referred to the Secretary of the Interior and by him nsmitted to the Commissioner of Indian Affairs. The letters of the retary and of the Commissioner are hereto appended.

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DEPARTMENT OF THE INTERIOR,
*Washington, June 7,* 1882.

R: I have the honor to acknowledge the receipt of your letter of the 6th instant, osing Senate bill granting right of way to the Arizona Southern Railroad Com- y through the Papago Indian Reservation in Arizona, and to invite your attention he inclosed copy of report on the same by the Commissioner of Indian Affairs of date suggesting an amendment to the bill.

his department sees no objection to the bill, amended as suggested by the Commis- er of Indian Affairs.

he bill is herewith respectfully returned.

Very respectfully,

H. M. TELLER,
*Secretary.*

on. ANGUS CAMERON,
*Of Senate Committee on Indian Affairs.*

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
*Washington, June 7, 1882.*

SIR: I am in receipt by your informal reference of a letter from Hon. A. Cameron, Senate Committee on Indian Affairs, dated the 6th instant, transmitting Senate bill granting a right of way to the Arizona Southern Railroad Company through the Papago Indian Reservation in Arizona, according to the plans of route and survey of said company, now on the files of this department.

I have examined said bill, and suggest the following amendment:

On page 2, line 3, after the word "and," strike out all concluding words of the section, and in lieu thereof insert the following words: "Such compensation as may be fixed by the Secretary of the Interior be paid to him by the said railroad company, to be expended by him for the benefit of the said Indians."

The bill, with accompanying letter, is herewith returned, and a copy of this letter is inclosed.

Very respectfully, your obedient servant,

H. PRICE,
*Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 747.

# IN THE SENATE OF THE UNITED STATES.

JUNE 22, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on the Judiciary, submitted the following

# REPORT:

[To accompany bill S. 1699.]

*The Committee on the Judiciary, to whom was referred the bill (S. 1699) for the relief of Anson Atwood, have considered the same, and report:*

Mr. Atwood was a dealer in tobacco in the year 1867. At that time was the practice of the internal-revenue agents to put an inspector's ncil-mark on wholesale packages in bulk, indicating the payment of tax. In this way it was left open for persons who saw fit to defraud the government by selling small packages at retail, which wholly caped taxation.

Mr. Atwood suggested that there should be a revenue-stamp attached each package retailed. It appearing, however, that stamps would not ck to the tin-foil in which small quantities of tobacco are retailed, he n proposed that the stamp should be printed on the tin-foil, so that would be destroyed when the package was broken. He devised a mp, consisting of the head of Washington and the words "United tes internal revenue, one ounce, two cents, chewing-tobacco," which had copyrighted.

The device was adopted by the government, and proved exceedingly cient in securing the tax. He now asks compensation for the use of copyright by the government.

But it seems to us he has no claim which should be allowed by Con- ss or submitted by special legislation to the Court of Claims. Con- ered as a mere device, which is all that he could copyright, it is in stance what has been in use by the government for postage and er stamps. It seems to us that if this were so far an original intel- tual product as to be properly the subject of copyright if intended for e, as a picture or work of art, it was not for the designer's own use. was something he had no right to use, and therefore he could not tect it by copyright. Whether this be true or not, the government no advantage from the device copyrighted. Any clerk could have de as good a design in five minutes. What Mr. Atwood did, which s a public benefit, was making the suggestion that the stamp should printed on the foil. Such a suggestion cannot be the subject of a im upon Congress.

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[ CONGRESS, } SENATE. { REPORT
t Session. } { No. 748.

IN THE SENATE OF THE UNITED STATES.

JUNE 22, 1882.—Ordered to be printed.

HAMPTON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 2066.]

*Committee on Military Affairs, to whom was referred the petition of ssie Benton Fremont, for relief in relation to the seizure of her property Point San José, in San Francisco, for military purposes, in* 1863, *beg ve to submit the following report:*

e subject embraced in the petition has been heretofore carefully idered and reported upon by committees both of the Senate and House of Representatives, and the facts so fully set forth that committee find very little to be added. On the 8th of April, 1872, West, from the Senate Committee on Military Affairs, made the wing report:

[Senate Report No. 114, 42d Congress, 2d session.]

APRIL 8, 1872.—Ordered to be printed.

WEST made the following report, to accompany bill S. 755:

*ommittee on Military Affairs and the Militia, to whom was referred a bill entitled "A for the relief of the former occupants of the present military reservation at Point San , in the city and county of San Francisco," beg leave to report:*

qnestion of the equitable title of the former occupants of the military reserva- t Point San José has heretofore been fully considered by this committee. The t presented by the committee February 8, 1870, upon "A bill to relinquish the st of the United States in certain lands to the city and county of San Francisco," ins the following statement of facts:

rom the organization of the State government of California, the city of San Fran- has contended that there was a pueblo, or town, under the Mexican government, site of the present city, on the acquisition of the country; that such pueblo d the land within the limits of four square leagues, to be measured off from the ern portion of the peninsula upon which the city is situate; and that the city eded to this interest.

he city, in 1852, presented her claim for the four square leagues to the board of commissioners, created under the act of Congress of March 3, 1851, for the settle- of private land claims in California, and asked its confirmation.

he United States contested this claim, denying the title of the city, but did not any claim of reserves, nor of any right to make reserves.

1854 the board confirmed the claim to a portion of the four square leagues, and ed it for the balance. *The portion confirmed embraced the reservation at Point San*

oth the United States and the city appealed from this decision; the United States se they denied the entire claim of the city, and the city because dissatisfied with iantity confirmed.

ibsequently the United States withdrew their appeal, and consented that the city leave to proceed upon the decree of the board, rendered in its favor, as under final . The United States district court dismissed the appeal accordingly. The city ued to prosecute her appeal.

"The withdrawal by the government of the appeal from the decree of the board was necessarily regarded as an admission and recognition on the part of the United States of the facts upon which the claim of the city rested, and as closing the controversy between the city and the government, as to the land to which the city's claim was confirmed. The titles to property within the limits of the city, to the value of many millions, rested upon this recognition.

"The supreme court of California declared that the United States had no title to the land within the limits confirmed. The common council of the city, in 1855, by ordinance, which was afterward confirmed by the State legislature, released and granted the city's title to the parties in actual possession of the land within the corporate limits of 1851. The supreme court of the State then declared that this release had the effect of *a perfect title*.

"Encouraged by the action of the general government, the city council, the State legislature, and the decisions of the highest tribunal of the State, citizens purchased lands at Point San José, the same as in other parts within the city limits, and very extensive and permanent improvements were erected on them.

"In September, 1864, ten years after the decision of the United States board of land commissioners, the case on appeal from the decision was transferred from the district court to the circuit court of the United States. In October, 1864, it was heard by the circuit court, and then, by stipulation filed October 31, 1864, *for the first time in that case*, the evidence of the reservation of Point San José, made by order of President Fillmore in 1850 and 1851, was produced. The decree of the circuit court, in accordance with the opinion of the court, read October 31, 1864, affirmed the validity of the claim of the city to four square leagues of land, excepting, however, the reservations from the confirmation. By the action of Congress this decree has become, with some modifications, final.

"The same ignorance of the existence of a reservation of lands at Point San José, shown by the law agents of the government during the twelve years of the pendency of the litigation between the United States and the city, was shown by the military authorities. While the Presidio reserve, in close proximity and in plain sight of Point San José, was protected by a fence, and always guarded by a military force, and the claim of the government was open, public, and notorious, there was nothing done at Point San José to indicate any such claim, and none of the many citizens who, from 1852 to 1864, made improvements and large expenditures at this point, were ever cautioned or notified to desist."

By the act of Congress of July 1, 1870, the right and title of the United States to the said reservation, except the portion thereof which is now held for military purposes, were relinquished for the benefit of "the parties severally who are at the date of the passage of this act in the actual *bona fide* possession thereof by themselves or their tenants, and in such parcels as the same are so held and possessed by them; or who, if they have not such possession, were deprived thereof by the United States military authorities when they went into the occupancy of said military reservation."

The equitable title to the lands so held by these parties was thus recognized by Congress as the legal title of the city of San Francisco, from whom they derived their right of possession, and had previously been admitted and recognized by the Attorney-General by the withdrawal of the appeal of the United States from the decree of the board of land commissioners.

But, while relieving all the parties whose lands happened to be outside of the portion which was then, and is now, considered necessary for military purposes, by restoring to them, without condition, their lands and improvements—among them several extensive manufacturing establishments, the city water-works, &c.—Congress failed to provide a similar measure of justice for the parties who had precisely the same title to the lands of which they had been deprived, and who in reality had a stronger claim for relief, from the fact that they were forcibly turned out of their homesteads and obliged to seek shelter elsewhere, while the more fortunate owners of the manufacturing establishments aforesaid never were disturbed in their possession.

The memorialists have, in the opinion of the committee, a just claim for relief on two grounds:

First. That the United States withdrew their appeal from the decision of the board of land commissioners, created under the act of March 3, 1851, and consented that the city have leave to proceed under the decree of that board, rendered in its favor, as under final decree.

Second. That President Fillmore by his *order* of reservation, dated November 6, 1850, modified by the subsequent *order*, dated December 31, 1851, failed to give *by proclamation* due notice, as required by the act of Congress of September 4, 1841 (5 Statutes, p. 435). The eighth section is as follows:

"SEC. 8. *And be it further enacted*, That there shall be granted to each State specified in the first section of this act five hundred thousand acres of land for the purposes of internal improvement: *Provided*, That to each of the said States which have already

received grants for said purposes, there is hereby granted no more than a quantity of land, which shall, together with the amount such State has already received, as aforesaid, make five hundred thousand acres, the selections in all of the said States to be made within their limits respectively, in such manner as the legislature shall direct, and located in parcels conformably to sectional divisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale *by any law of Congress* or *proclamation of the President of the United States*, which said locations may be made at any time after the lands of the United States in said States, respectively, shall have been surveyed according to existing laws; and there shall be, and hereby is, granted to each new State that shall be hereafter admitted to the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial government, for purposes of internal improvement as aforesaid, shall make five hundred thousand acres of land, to be selected and located as aforesaid."

The dwelling-houses and other improvements erected by the former occupants of the lands within the present limits of this reservation have been in use by the government for the past seven and nine years, respectively. Had they not existed when military possession was taken of this point, a considerable expenditure of the public money would have been necessary for officers' quarters and other purposes, which has thus been saved to the government.

The owners of these premises were excluded from the relief granted by the act of July 1, 1870, for no other reason than that their lands and improvements were useful and necessary to the government.

Under these circumstances, it appears to the committee eminently just and incumbent upon the government that compensation be made for the property thus retained for public use.

When it is considered that, at the rates of interest prevailing in California, the loss of eight years' income from lands is equivalent to the loss of the capital invested, it will be seen that the relief granted by the bill will barely amount to one-half of the actual losses suffered by the parties who were deprived of property to which, as the highest tribunal of the State of California had declared, they had a perfect title.

This bill provides that compensation shall be paid for the cash value of the lands within the present limits of this reservation, and the cash value of the improvements thereon at the time when the military occupation commenced, and that the Court of Claims shall determine the respective amounts of damage sustained by the several persons who were deprived of said lands when taken for public use.

## On the 8th of June, 1878, Mr. Butler, from the Committee on the Judiciary of the House of Representatives, made the following report:

[House report No. 922, 45th Congress, 2d session.]

JUNE 10, 1878.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Butler, from the Committee on the Judiciary, submitted the following report to accompany bill H. R. 5178:

This bill asks relief for the claimants of a part of an alleged military reservation at Point San José for the benefit of the parties who had in good faith obtained title thereto under the laws of the State of California, before they had any notice that the lands were claimed in any way by the United States.

The state of the title seems to your committee to be this:

By the laws of Mexico a pueblo or town owned the lands in the limits of four square leagues. San Francisco claimed, under the treaty of Guadalupe Hidalgo, to be such pueblo and to own the four square leagues from the northern portion of the peninsula on which it is situated. Such rights were recognized in the treaty and are well known to the public law, and are confirmed by the Supreme Court, 5 Wallace, p. 336.

The United States established a board of land commissioners, and in 1852 the city presented her claim to those four square leagues to the board of commissioners created under the act of Congress. The United States contested this claim before the commissioners, under a general claim to all the property, but set up no claim to the premises in question as a military or other reservation, nor any right to make any such reservation; but, as a matter of fact, the United States did claim the presidio, which was fenced in and held by the military authorities as a reservation for a public use.

In 1854, the commission confirmed the title of the city to a portion of the four square leagues, embracing the land now in question, but rejected the claim for some other portion. Both the United States and the city appealed from this decision, the United States denying the entire claim of the city, and the city not being content with the rejection of a part of the claim which is not here material. Afterward the United States withdrew their appeal from the circuit court, and consented to the filing of a decree in favor of the city, and the appeal was accordingly dismissed.

This closed between *the city and the* United States as to the title of this land. On

this action of the United States the title to the whole lands within the limits of the city of San Francisco rests, and has since been confirmed by the decision of the Supreme Court above referred to.

The claimants obtained title to the land in question from the city so as to make a perfect title, as it was confirmed from the supreme court of the State. The claimants then entered upon the occupation of their lands, and made very large and permanent improvements. Meanwhile, the appeal of the city went on before the circuit court of the United States, was heard by that court in October, 1864, when, for the first time. was filed an order of President Fillmore, issued in 1850, and the second order, being a modification of the first, of 1851, making a reservation for military purposes of Point San José.

The fact of this reservation by the government of the land in question for military purposes had never been made known by proclamation, and an order had never been filed in the surveyor-general's office of California, and was not known to those seeking this relief. The decree of the circuit court confirmed the claim of the city to the four square leagues, but excepted the reservation, while the presidio reservation before referred to was in full sight of Point San José, and was held by the military and protected by a fence, while no such action was taken against Point San José, and the possession was open, public, and notorious in the claimants, and those under whom they claim. After the decree of the circuit court the military authorities took possession of eight hundred yards of the northern portion of the point and claimed to hold it as a reservation under an order of General Halleck, of October, 1863, as a military necessity, and it is now held by military authority.

The claimants now come forward and contest the validity of this reservation, although it was confirmed by the Supreme Court of the United States on technical grounds only.

But the main ground on which the claimants rest their claim against the United States does not appear in the decision of the court, and that is that the reservation for military purposes could not be made secretly by the President, and lay ten years without notice to the owners of the land, and without being published either by proclamation or filing in the records of the land office for the proper district of California.

The proceedings in the Supreme Court do not appear to have informed the court when this order seeking to make this reservation was forwarded to California or made known to the public residents there; and, in fact, it did not reach the surveyor-general's office until the 27th of June, 1864, more than ten years after the city of San Francisco had obtained title thereto, although the order was dated in 1851, three years before the commissioners passed upon the claim.

By referring to the statute (5 Stat. at Large, 435) under which the President is authorized to declare military reservations, it appears that that must be done by proclamation. Here was no proclamation, and the claimants, in the judgment of your committee, well contend that this reservation could not affect their title, honestly acquired, without any notice ever being filed in the surveyor-general's office, and without any notice, published or otherwise, to any party.

Bills for relief, under this state of facts, were reported upon favorably in the Forty-first Congress, and afterward passed the Senate by a very decided majority. It was also favorably reported upon by the House committee in the same Congress. It was again reported favorably in the Forty-second Congress in the Senate, the bills providing for different methods of relief.

Your committee can have no doubt that the proper relief ought to be granted and the title confirmed in the present claimants to so much of the ground as is set forth in the bill, and then, if the United States desire to obtain any portion of the land for military purposes, the government can do so as other property is taken for public use. But the probability in the mind of your committee is that the United States will never require any portion of it for purposes of defense, it being now a part of the city of San Francisco, and the range of artillery having, within the last twenty-five years, been so greatly extended that any defensive works erected at Point San José would more endanger the safety of the city by drawing the fire of an enemy upon it than they would aid in repelling an enemy; for whatever enemy gets within the reach of the guns from San José will be able to destroy the city of San Francisco by shells from their ships.

The committee therefore recommend the passage of the substitute herewith submitted for House bill No. 730.

An abstract of the title of Jessie Benton Fremont has been filed with the committee, showing clearly that the title to the property in question is in her, and unclouded, except by the claim that has been set up in behalf of the United States. This claim of the United States to the *land* within the military reservation at Point San José is sufficiently

treated of in the above reports. By the act of July 1, 1870, this claim of the United States was practically abandoned, and the legal and equitable right of the private owners conceded. The property of several persons, within the said reservation, was seized by the United States for military purposes during the late war between the States, and the owners put out of possession. But the greater part of the land within the reservation was not so seized, but continued in the possession of the owners or their agents.

When the war closed the owners of the property which had been seized, and was still held by the United States, applied for a restitution of their property. The military authorities refused to restore it, on the ground that it was still necessary to hold it for military purposes, and, in addition to this ground for the refusal, they suggested the old claim of the United States to the whole property in the reservation, and set it up in defense of the actual possession which had been acquired by military seizure. This revival of the old dispute in regard to the title induced the owners of that portion of the reservation which had not been seized, to apply to Congress for relief by some act quieting their title. On July 1, 1870, an act was accordingly passed relieving this class of owners by releasing all claim of the United States to such parts of the reservation, at Point San José, as were not then held for military purposes.

But this property of Jessie Benton Fremont was then held for military purposes, so that she took no relief under the act. The title to all the land within the reservation, both that which was actually seized and that which was not, rested upon precisely the same grounds. The act of July, 1870, was therefore a full recognition of the rightfulness and justice of the title of these private owners, and an abandonment of the old claim of the United States.

The property of Jessie Benton Fremont and of the few others which was still held for military purposes seems to have been excluded from the act from considerations of present expediency alone. The relief given by the act was a surrender of the property to the owners, and the abandonment of all claim to it on the part of the United States. It was not deemed expedient, at the time, to surrender possession of the property of Jessie Benton Fremont, because it was believed that the defense of the city of San Francisco required, or might require, it to be held by the United States. But her right to relief of some kind has never been directly denied. If her property was really necessary to the defense of the city the relief to be given her was to pay her for the value and detention of her property. But there seems to have been a difference of opinion whether the property was necessary for the defense of the city or not. The report of the Judiciary Committee of the House of Representatives is upon the ground that it had become unnecessary for the defense of the city because of the great extension in late years of the range of artillery, and that committee therefore recommended a surrender of the property.

While this difference of opinion on this point has remained unsettled the relief of the petitioner has been delayed, as your committee believe, unreasonably. If the same relief which was given to her more fortunate neighbors by the act of July, 1870, cannot be safely extended to her, payment of the value of the property to her ought not to be longer delayed. It is believed that the Court of Claims is the best tribunal to ascertain and determine this value. Justice requires that it should be ascertained and paid to her without further delay, unless the Secretary of War, upon proper consideration and advice, shall deter-

mine that the property is no longer necessary for the defense of the city of San Francisco, and that it may be safely surrendered to the owner. But the settlement of this question should not be longer deferred.

The committee therefore report the accompanying bill and recommend its passage.

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47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 749.

IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1237.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1237) granting a pension to Isador Rohrer, having examined the same, make the following report:*

That said Rohrer enlisted as a private in Company H, Second Illinois Light Artillery, September 15, 1861, and was discharged July 29, 1865, when his company was mustered out of the service. On the 12th October, 1869, he filed his application for invalid pension, alleging, as the basis of his claim, that while in the service and in the line of his duty—

On Cumberland River, in the State of Tennessee, on the 20*th April*, 1864, he contracted or received the following disability, viz: That, without any fault or negligence on his part, in the night-time, his horse stepped in a hole and stumbled, throwing affiant over his head, severely injuring his left shoulder in the fall, and producing partial paralysis in the same, unfitting him for physical labor.

In a subsequent affidavit, filed November 16, 1872, the claimant states that he was first treated for his injury by hospital surgeon at Clarksville, Tenn., but was never confined in any hospital during the service for the injury received. The company roll shows him present for duty from December 31, 1863, to June 30, 1865. The roll of the company for March and April, 1864, is dated April 30, 1864, at Clarksville, Tenn. There is no evidence, record or otherwise, that the claimant ever lost a day's service because of the alleged injury. Henry C. Whiteman, the captain of claimant's company, in an affidavit filed November 16, 1872, states that claimant, while on a scouting expedition on White Oak Creek, between Cumberland and Tennessee Rivers, on or about *August* 8, 1864, was *accidentally* thrown from his horse, falling on his left shoulder, and receiving a severe injury of his shoulder at *that* time.

It will be noticed that this affiant fixes a different date and place of the alleged accident from that of the claimant. Lieut. James Eckdale, in an affidavit filed December 15, 1873, states that claimant, while on a scouting expedition on *November* 18, 1864, between Cumberland and Tennessee Rivers, was accidentally thrown from his horse, the horse falling on his left shoulder; by which he received an injury of the left shoulder at *that time.* This affiant gives *November* 18, 1864, as the date of the alleged accident, and states that the *horse fell* upon claimant's left shoulder, causing some injury at the time.

These discrepancies as to the time of the alleged accident are unexplained, *and cast a shade of suspicion* upon the claim. It was not usual

for the artillery arm of the service to be engaged in *scouting expeditions*. It is not shown that any disability existed at that date of claimant's discharge. No physician or other person testifies as to his condition or the existence of any disability at that time. In a third affidavit, filed by him December 8, 1873, the claimant states that after his discharge he was advised by one Dr. Cooper, whose residence is now unknown to him, that he could not be cured. He further states:

> I have been told by all the physicians whom I have consulted that they could do nothing for me, and having no money to spend on uncertainty I have had no medical treatment since my discharge. Sometimes, when I would have the neuralgia very bad, I have gone to physicians to get some relief; the only ones whose statements I can get were Drs. Allen and McEwen.

Dr. McEwen states that during the year 1873 he examined claimant and found that he had a diseased shoulder, "giving rise to neuralgia, which is aggravated by exposure to damp weather." Dr. Allen states that during 1873 he treated claimant for neuralgia, and "believes the predisposing cause is from wounded trunk of some of the *nerves* of the left shoulder." Dr. Wood also treated him for injury of left arm and shoulder for nine months during the year 1872. Aside from claimant's own statement, this was the first medical attention he received after his discharge. Neither of these doctors express any opinion as to date or origin of the alleged disability.

Dr. Samuel, the examining surgeon, after giving the claimant's statement as to the origin of the disability, says it has resulted—

> In the injury of the upward and backward motion of the arm, which renders him unable to do hard work without producing considerable pain and increasing in some degree paralysis, which is slight.

The claimant was subsequently again examined by Examining Surgeon, Dr. Joseph O. Hamilton, who, under date of April 1, 1874, describes his condition as follows:

> Rheumatism of the deltoid trapezius and supra spinatus muscles, causing stiffness and debility of above-named muscles.

These examining surgeons both certify that the disability is uncertain as to time and of indefinite duration.

The claim was rejected by the Commissioner of Pensions upon the ground that there was no record of the alleged disability in the service or at date of discharge, and because of the claimant's inability to furnish satisfactory testimony to connect it with his military service. The case stands before Congress just as it did before the Commissioner. No additional evidence has been produced. The House has passed the bill for claimant's relief, but after a careful examination of the evidence your committee see no good or valid reason for overruling or reversing the decision of the Pension Bureau, and accordingly recommend that the bill be indefinitely postponed by the Senate.

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CONGRESS, } SENATE. { REPORT
Session. } { No. 750.

IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

ACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1520.]

*Committee on Pensions, to whom was referred a bill granting a pension Ann Lally, having examined the same, make the following report:*

at petitioner, Ann Lally, is the sister of Patrick Pillion, who en- l in Company D, Twenty-third Regiment Illinois Volunteers, in , 1861, and who, as alleged, was killed in action July 3, 1864 (at what or battle is not stated). The petitioner claims to have been the r-mother of her brother, Patrick Pillion, and as such she asks that pecial act of Congress her name be placed upon the pension-roll. It ars that the mother and father of the soldier died when he was only t three and one-half years of age, and that from that time to the of his enlistment in the Army he resided with his sister, Mrs. Lally, states that she supported him till he was able to earn a living for elf. After he commenced earning wages, he, from time to time, led his sister small amounts; and while in the service he sent her remittances. Petitioner has made no application to the Pension au for a pension, and the papers on file in support of her applica- to Congress do not affirmatively establish her right to a pension pendent foster-mother of the deceased soldier. It appears that petitioner's husband was living at the date of her brother's enlist- and death. It is not shown that the husband did not support ioner, or that she was dependent upon her brother. The real ion of the parties was that of sister and brother, and it is not sat- torily shown that she ever assumed the relation of foster-mother to oldier. No record evidence of the soldier's death is produced, nor y explanation given for the failure to produce it. On the case nted your committee do not consider petitioner entitled to the al relief sought by the bill, and accordingly recommend that it be initely postponed by the Senate.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 751.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1819.]

*The Committee on Pensions, to whom was referred the bill (S. 1819) granting an increase of pension to Mrs. Elizabeth C. Custer, widow of General George A. Custer, having carefully considered the same, report as follows:*

That the evidence on file in this case proves conclusively that the applicant is the lawful widow of George A. Custer, who entered the Army as a second lieutenant in 1861, and served with conspicuous gallantry throughout the war of the rebellion. For such gallant and meritorious service he was rapidly promoted until on March 13, 1865, he was brevetted a major-general in the United States Army.

General Custer was honorably mentioned and received promotions for distinguished conduct at the battles of Gettysburg, Yellow Tavern, Winchester, Fisher's Hill, and Five Forks.

After the war, to wit, on July 28, 1866, General Custer was appointed lieutenant-colonel of the Seventh Cavalry.

In 1876 General Custer was ordered to participate in the Little Big Horn expedition, and was killed in battle on the Little Big Horn River, in Montana Territory, on the 25th day of June, 1876. The extraordinary sad details of this unfortunate battle are too fresh in the minds of the American people to require repetition here; the entire command accompanying General Custer was annihilated, not one escaping to tell the story.

Your committee are of the opinion that the widow of this valiant officer ought to be granted a pension of $50 per month.

On June 26, 1876, Mrs. Custer was granted a pension of $30 per month.

Your committee recommend the passage of Senate bill 1819, with the following amendment, viz, strike out all after the word "to" in line 4, and insert in lieu thereof the words "increase the pension of $30 now received by Mrs. Elizabeth C. Custer, widow of General George A. Custer, to $50 per month, to take effect from and after the passage of this act."

O

H CONGRESS, } SENATE. { REPORT
st Session. } { No. 752.

IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1904.]

*Committee on Pensions, to whom was referred the bill (S. 1904) grant- a pension to Sophia A. Melson, having examined the same, make the lowing report:*

at Sophia A. Melson is the mother of Minor I. Melson, who en- l, October 4, 1861, as a private in Company E, First Regiment ware Volunteers, and who died September 17, 1862, of wounds ved in action at the battle of Antietam, leaving neither wife hild surviving him. His mother made application for pension on October, 1862.

er a thorough examination of the claim it was rejected in January, on the ground that the soldier did not contribute to the support claimant, or in any way recognize his obligation to aid in support mother. This conclusion is clearly sustained by the evidence on fore the Commissioner of Pensions. No additional proof has been iced before your committee. It is shown by the affidavit of Hen- Byrd that the claimant lived with her in service for seventeen , from 1857 to 1874, and was paid a small sum as monthly wages ldition to her board; and that her son, who for several years ous to his enlistment lived as a hired man with Samuel P. Truitt, 12 miles from deponent's, did not contribute to his mother's sup- luring the time she lived at deponent's house.

the opinion of your committee there are no sufficient reasons pre- l for annulling the decision of the Pension Bureau in this case, ney recommend that the bill be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 753.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 547.]

*The Committee on Pensions, to whom was referred the bill (S. 547) granting a pension to E. G. Hoffman, having examined the same, make the following report:*

That said Hoffman entered the United States military service in July, 1861, as sergeant of Company A, Fifth New York Volunteers. At the battle of Gaines's Mill, Va., June 27, 1862, he received a gunshot wound in his left arm, shattering the bone and necessitating a resection above the elbow, which left his arm practically useless. He was mustered out of service July 31, 1862.

In November, 1862, after his wound had healed, he re-entered the service as first lieutenant, company D, One hundred and sixty-fifth New York Volunteers, and was subsequently promoted to the captaincy of company F.

At the close of the war his regiment was ordered to South Carolina, and in July, 1865, he was appointed chief of military police of the subdistrict of Charleston. On the 1st of September, 1865, his regiment was sent to Hart's Island to be mustered out of service, but General Burnett, the commanding officer at the post of Charleston, would not allow Hoffman to be retired or discharged with his regiment, but continued him on duty in Charleston as chief of military police. While in the performance of his duties, at a fire on Hayne street, October 18, 1865, he was severely injured by the walls of the burning building giving way and falling upon him, breaking his right thigh in two places and burning him badly. His right hand was so badly burned as to contract the sinews and leave the hand drawn up. His injuries confined him in bed for three months; his right leg is almost two inches shorter than the left, and his right hand is practically disabled. General Burnett, in an order bearing date October 21, 1865, appointing another chief of military police, states that Captain Hoffman was "in the faithful discharge of his duties" when he received said injuries.

In April, 1866, Captain Hoffman went to New York and obtained his discharge, which was *ante dated* to September 1, 1865, so as to make it correspond with the date his regiment was mustered out of the service. He was in fact, however, not relieved from duty or discharged until after receiving the injuries aforesaid.

In 1867 he applied for a pension and was allowed $4 per month for the gun shot wound in left arm, received at the battle of Gaines's Mill, Va., but for injuries received while acting as chief of military police no allowance was *made. The War Department* having ruled that Captain

Hoffman's time of service ceased with the mustering out of his re
the Commissioner of Pensions held that he was not *pensionable* for
received after that date. This ruling may be technically corre
under the special circumstances of this case, your committee ar
opinion that Captain Hoffman should be relieved from its op
He was denied a discharge when his regiment was mustered ou
on special detail duty at the time), and his commanding officer r
him to continue in the performance of the special service to w
had previously been assigned. He did so and was injured in the
and in the line of his duty. It would be unjust on the part of t
ernment, after having *detained* him, as already stated, in its se
urge as a bar to his claim for pension that he was *constructi*
charged with his regiment before receiving his injuries.

Your committee think the bill should be amended by addin
end of the eighth line the following, viz: "To commence from
sage of this act, and to be in lieu of the pension he is now receivin
as thus amended they recommend the passage of the bill.

○

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 754.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1733.]

*The Committee on Pensions, to which was referred the bill (S. 1733), granting a pension to Elizabeth C. Crawford, having carefully examined the same, makes the following report:*

Claimant filed declaration for pension December 1, 1879, stating that she is the widow of John Crawford, who served in Colonel Austin's or Colonel Youngblood's regiment of South Carolina militia in the war of 1812. She also states that her husband could not write his name, but made his (×) mark. The records show that no one by the name of John Crawford is borne on the rolls of Captain Austin's company, or on the rolls of Colonel Austin's regiment of South Carolina militia, but that the name of John L. Crawford is borne on the rolls of Capt. William Austin's company of South Carolina militia, and that he wrote his name in a fair, legible hand. The records also show that the name of John Crawford is not borne on the rolls of either Captain Frazier, Key, or Cheathem, of South Carolina militia. The roll of Captain Purness' company shows that John Crawford served from December 10, 1813, to March 15, 1814. All the above companies belonged to Colonel Youngblood's regiment. The rolls also show that this Crawford signed his name by a (×) mark. There is but one John Crawford borne on the rolls of Colonel Youngblood's regiment, and he was alive and applied for a bounty-land warrant several years after claimant states her husband had died.

The claimant states that she knows of no surviving comrade by whom she can prove the identity and service of her deceased husband; that his services were before their marriage.

The claim was rejected by the Commissioner of Pensions on the ground—

that claimant failed to establish her identity as the widow of any soldier who rendered service in the war of 1812; that she is unable to state of her own knowledge the name of the captain under whom her husband served. The record shows that but one John Crawford was borne on the rolls of Colonel Youngblood's regiment, and the files of this office show that that man was alive and applied for bounty land several years after the death of claimant's husband, as shown by the evidence on file. The name of John L. Crawford appears on the rolls of Col. William Austin's regiment, but this man signs his name to the company's rolls in a fair, legible hand. The claimant testifies, and so does a witness, that her husband could not write his name.

Your committee, after a careful examination of the case, is of opinion that the evidence on file is not sufficient to authorize granting a pension by special act of Congress, and recommend the indefinite postponement of the bill.

O

TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 755.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

r. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1494.]

*he Committee on Pensions, to whom was referred the bill (S. 1494) for the relief of Catharine Johnson, having carefully examined the same, submit the following report:*

That claimant is the widow of Zachariah Johnson, late private in ›mpany C, Sixtieth Regiment Indiana Volunteers. That the soldier listed December 3, 1861, and died July 2, 1862.

Claimant filed application for pension in July, 1863, declaring that r husband was drowned in Green River, Kentucky, while attempting cross in a skiff.

The records of the Adjutant-General's Office show that the soldier is "drowned in Green River, Kentucky, July 2, 1862. Supposed to ve drowned himself while insane."

Your committee find on file with this case evidence tending to prove e soldier's disposition to insanity previous to his demise, he having me two months prior attempted to take his own life by cutting his roat.

Your committee find nothing in the shape of evidence, either medi- l or otherwise, to connect the soldier's disability with his military rvice, and therefore recommend the indefinite postponement of the ll.

C

I CONGRESS, } SENATE. { REPORT
st Session. } { No. 756.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

MAXEY, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1275.]

*Committee on Military Affairs, to whom was referred the bill (S. 1275) r the relief of First Lieut. Eugene Griffin, U. S. Army, having carelly considered the same, respectfully submit the following report:*

he chairman of the committee addressed a note to the Secretary of r, requesting such pertinent information in respect to said bill as department might be able to furnish, and received the following y:

WAR DEPARTMENT,
*Washington City, March 4, 1882.*

R: I have the honor to acknowledge the receipt of your letter of the 21st ultimo, sing S. 1275, Forty-seventh Congress, first session, which is a bill to relieve First t. Eugene Griffin, Corps of Engineers, and acting assistant commissary of subsist- of the post of Willets Point, from all responsibility for the loss of $144.82, stolen ie then commissary sergeant, now a deserter from the United States Army.
reply to your request for such papers and information as the department may in relation to the matter, I beg to invite your attention to the inclosed report ie subject, dated the 1st instant, from the Commissary-General of Subsistence.
Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

n. JOHN A. LOGAN,
*Chairman Committee on Military Affairs, United States Senate.*

Which communication was accompanied by the following communion from the Commissary-General of Subsistence:

WAR DEPARTMENT,
OFFICE COMMISSARY-GENERAL OF SUBSISTENCE,
*Washington, D. C., March 1, 1882.*

t: I have the honor to return herewith the letter of the chairman of Senate Come on Military Affairs of 21st instant, inclosing Senate bill No. 1275, for the relief irst Lieut. Eugene Griffin, Corps of Engineers, U. S. Army, and requesting papers and information as the War Department may have in relation thereto.
reply I have to report that upon receipt at this office of the money accounts of tenant Griffin, reporting the loss for which he is now seeking relief in Congress, were referred for settlement to the accounting officers of the Treasury, who, not ng power to allow a credit claimed for money alleged to have been stolen sions of Second Comptroller, 1865, paragraph 34, page 6), refused to recognize the as a credit in the officer's accounts, and he became thereby "held responsible" at reasury and acquired the right to bring suit for relief in the Court of Claims r the act of May 9, 1866 (14 Statutes, 44, now sections 1059 and 1062, Rev. Stat.). Clark's case, 13 Court of Claims Reports, 560 561.)
e object of the act of May 9, 1866, as stated in the debate upon its passage (Con-

gressional Globe, first session Thirty-ninth Congress, 1865–'66, part 3, page 2202) being to provide in all cases of alleged losses by paymasters, quartermasters, and commissaries of subsistence, that "instead of each case being adjusted and settled in the hurry of Congressional business by a committee of either House or Senate, and a special enactment passed for the purpose, there shall be a general law referring to the Court of Claims all cases of this character, authorizing that court to report what are the facts in each case and whether credit should or should not be allowed to the disbursing officer," this office advised Lieutenant Griffin to institute proper proceedings in the Court of Claims under the above act, that court having decided in Glenn's case (4 Court of Claims Reports, page 501) that the act was prospective in its operations and gave jurisdiction of cases which might occur after as well as cases which had occurred at the time of its passage.

This office has had official information, through the Department of Justice, that suit was regularly begun by Lieutenant Griffin under the law cited. If the suit has not been disposed of by that court, it is doubtless still pending in that tribunal.

Copies of all papers connected with the case which are on file, or of record in this office, have been furnished to the Department of Justice, and such as have been called for by Lieutenant Griffin, which could be furnished, have been furnished that officer. All the most important papers, however, are on file with Lieutenant Griffin's accounts for April and May, 1881, in the office of the Third Auditor of the Treasury.

If, after knowledge of the foregoing facts, the Military Committee of the Senate desire copies of the papers on file and of record here, they can be readily furnished.

Respectfully, your obedient servant,

R. MACFEELY,
*Commissary-General Subsistence.*

Hon. the SECRETARY OF WAR.

It is the opinion of the committee that jurisdiction was complete in the Court of Claims; that jurisdiction attached by reason of the institution by Lieutenant Griffin of proceedings in that court.

Wherefore the committee is of opinion that the claim of Lieutenant Griffin is not a proper subject-matter of investigation by the committee.

Wherefore the committee reports the bill (S. 1275) back with recommendation that the same do not pass, and that the committee be discharged from its further consideration, and that said bill be indefinitely postponed.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 757.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1606.]

*The Committee on Military Affairs, to whom was referred the bill (S. 1606) for the relief of George A. Jaeger, have duly considered the same, and submit the following report:*

Your committee referred the bill, which proposes to pay to claimant $1,016 for property destroyed by fire October 7, 1874, at Camp Halleck, Nev., to the Secretary of War, and received from him the following:

WAR DEPARTMENT,
*Washington City, May 3, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 27th ultimo, inclosing a copy of the bill (S. 1606) authorizing payment to George A. Jaeger, late a lieutenant in the Twelfth United States Infantry, of the sum of $1,016, as compensation for his property destroyed by fire at his station in Camp Halleck, Nev., October 7, 1874.

In reply to your request for such information as the department may be able to furnish upon the subject, I beg to inclose herewith a copy of the official report of the destruction by fire of certain officers' quarters, &c., at Camp Halleck, Nev., October 7, 1874, as submitted by the post commander, which report contains all the information possessed by the department in relation to the matter in question.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. F. M. COCKRELL,
*Of Committee on Military Affairs, U. S. Senate.*

HEADQUARTERS CAMP HALLECK, NEV.,
*October 7, 1874.*

SIR: I have the honor to report that the two-story frame building used as officers' quarters, took fire this morning between 7 and 8 o'clock, and, despite the utmost exertions of the whole command, burned down. Fortunately the morning was still and we were enabled to confine the fire to the building in which it originated.

The fire was caused by the studding for the inside casing being in contact with the brick chimney. The fire had obtained such headway before it was discovered that no efforts, however well directed, could, with the appliances on hand (water buckets), have extinguished it.

Acting Assistant Surgeon E. E. W. Corson, U. S. A., lost nearly all his effects. Lieut. George A. Jaeger, Twelfth Infantry, also lost a considerable portion of his effects.

Very respectfully, your obedient servant,

A. GRANT,
*First Lieutenant First Cavalry, Commanding Post.*

ASSISTANT ADJUTANT GENERAL,
DEPARTMENT OF CALIFORNIA,
*San Francisco, Cal.*

[First indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE PACI
*San Francisco, October*

Respectfully forwarded to the assistant adjutant-general headquarters of
Saint Louis, Mo.

J. M. SCHOFIE
*Major*

[Second indorsement.]

HEADQUARTERS OF THE AI
*Saint Louis, October*

Respectfully submitted to the Secretary of War.

W. T. SHERM

Your committee find that the fire originated without any fau
ligence on the part of claimant, and, following the precedents i
cases, report in favor of paying him for such property, destroye
as was useful, necessary, and proper for him to have in quarte
service in the line of duty, and recommend striking out all afte
acting clause and inserting what follows in italics.

The claimant filed a schedule of property claimed to have b
in which there are many items which may have been conveni
pleasant to have, but which were by no means necessary for a
in the service in the line of duty, even in quarters.

Your committee therefore recommend that the amount to be p
not exceed $500, which sum, in the opinion of your committee,
sufficient to compensate claimant for the actual cash value of a
sary and proper articles which may have been destroyed.

C

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 758.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3581.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3581) granting a pension to Lizzie M. Mitchell, having carefully considered the same, submit the following report:*

The House Committee on Pensions, in their report, have correctly stated the facts of the case, which your committee adopt as their own. Their report is as follows:

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 3581) granting a pension to Mrs. Lizzie M. Mitchell, having had the same under consideration, beg leave to submit the following report:*

Upon examination of the papers in this case, your committee adopt substantially the following report made at the last session of Congress, and recommend the passage of the bill:

"We find from an examination of the papers submitted to the committee and originally filed at the Pension Office that the petitioner is the widow of Capt. John Mitchell, of the First United States Infantry, who served faithfully in the Army of the United States, both before and during the war of the rebellion. When the First and Forty-third Regiments of United States Infantry were consolidated, Captain Mitchell, then brevet lieutenant-colonel, was examined by a board of officers and found to be so severely wounded as to be unable to do active duty. He was placed on 'waiting orders,' and afterwards sent on several details with recruits to the forts in the Indian Territory and other remote points. Just after the performance of one of these duties he returned to Fort Leavenworth, laboring greatly with his wound, and died at that point November 13, 1869. The widow has made an earnest attempt to obtain a pension, but in view of the record the Pension Office declines to admit her. This record is the certificate of the assistant surgeon of the post, in which the cause of the death of the soldier is given as 'alcoholism' and disease not incident to the service and line of duty. The petitioner has filed with your committee a mass of evidence of the most respectable character, which is undoubtedly entitled to credence, and from a thorough examination of the same, your committee believe that she is entitled to the relief she seeks.

"Briefly recapitulated, the evidence against the record made by the surgeons at Fort Leavenworth is about as follows:

"The commanding officer of the deceased officer's regiment, in a eulogistic letter, says: 'His death was undoubtedly owing to the effect of wounds received during his gallant and efficient service in the Army.' One of the lieutenants of his company, who was present with him at Fort Leavenworth at the time of his death, states as follows:

"'I know Captain Mitchell to be a strictly temperate man in every respect, commanding the respect of those under him and the confidence of those above him. The last time I met him was on recruiting service at Fort Leavenworth, in 1869. The principal duty which he was performing was conducting recruits across the plains to posts on the remote *frontiers, a duty most* arduous and trying in its nature, and re-

quiring the officers in charge not only to perform their duties efficiently and discreetly, but to exercise a paternal care over the inexperienced recruits. If my opinion should be of any weight, from knowing Captain Mitchell so long and intimately as I have, I should unhesitatingly assign the cause of his death to wounds received in action.'

"Thomas Hill, who was the body-servant of the officer from 1864 until his death, states:

"'He was badly shot in one arm, so that I had to be near and assist him. Knew his character and habits well; they were good. The captain was not a drinking man in the sense in which that term was understood; he was always present for every duty, even more so than any of the lieutenants under his command.

"'I was with Captain Mitchell at Fort Leavenworth before and at the time of his death. The captain had been on duty about two weeks when he died. He was suffering from cold, and was not well when he was ordered to take recruits out to Fort Scott. When he returned he was suffering very much with a cold, and was otherwise very unwell. His friends tried to get him to remain in the house and not to do so much duty, but after returning from his trip he took his tour as officer of the day, which entirely prostrated him. He was taken down sick, and never left his bed. The assistant surgeon came to see him on Friday, the 12th, but did not appear to think he was very sick. I was uneasy about him, and I thought he was sicker than the assistant surgeon seemed to consider him. In the afternoon of the 13th the assistant surgeon came to see the captain, but did not appear to consider him very sick.

"'I asked the assistant surgeon what was the matter with the captain. He replied, 'It was very strange; I do not know exactly, but think it is from having been wounded so severely and so often during the war.' The captain suffered very much from the wounds.'

"Dr. Edward W. Lee, surgeon P. F. W. and C. Railroad, certifies that—

"'He was acquainted with the deceased officer from the latter part of 1866 to the time of his death. During that time he had frequent opportunities of observing his habits, and that at all times his condition was such as became an officer and a gentleman; at no time did he seem unfit to do his duty. He was suffering from necrosis of the bones of the right leg, and at times a blood-vessel would ulcerate through, causing profuse hemorrhage. There was an ulcer on the leg all the time, and several pieces of bone came through at different times. He had been wounded no less than four times. The right elbow was excised from injury, and he had a bullet in the left hip. These injuries undermined his health.

"'I saw Captain Mitchell for the last time alive (September, 1869) on his way to the West, and from my observation I can truthfully say that his physical condition was such as to unfit him for the exposure that he subsequently underwent. I had an opportunity to examine the body after its arrival at Chicago, and considering that no special means were used for preservation, the condition of the remains would preclude the notion that the cause of death was alcoholism.'

"Corroborating the testimony as to the good character and even habits of the deceased are letters from several general officers who had personal and intimate knowledge of the deceased. The surgeon who made the record in 1869 has been written to, and we find the following memoranda in the case:

"Maj. David S. Magruder, surgeon, U. S. A., under date of February 7, 1878: 'That it is not possible to give any information about the case of Capt. John Mitchell, as at this date he has no recollection of it whatever.'

"B. J. D. Irving, surgeon and brevet colonel, U. S. A., in a statement written at Fort Wayne, Mich., January 24, 1871, says that in the summer and autumn of 1866, while he was serving as post surgeon at Fort Leavenworth, Kans., he knew Captain Mitchell during a period of six or seven months, and that his habits were good—those of a temperate man; that he was badly crippled from severe wounds, but was looked upon as one of the most promising and efficient young officers at the post.

"The evidence of the body-servant above referred to shows that this surgeon had never seen or attended the captain except immediately before his death, when he expressed ignorance of the immediate disease.

"The record of the Adjutant-General's office gives the following showing of the wounding of this officer:

"'Wounded August 11, 1860, shot in left hip, rifle bullet, in engagement with Gosh Utes and Bannocks in the Ute territory. 2d. Antietam, right hand and face, September 17, 1862, by premature explosion of 12-ton gun. 3d. On or about November 14, 1863, pistol wound received in right leg accidentally by horse falling through bridge near Rappahannock Station, Va. 4th. Wounded in right elbow in action on Quaker's Road, near Boydtown Plank Road, Va., March 14, 1865. Operation, resection head of ulva and radius, union of extremities of these bones and humerus motion very slight.'

"Your committee, after a thorough consideration of the case, believe that the arbitrary record made by the surgeon has done great injustice to the petitioner, and that

while the Pension Office is precluded from action in her behalf by that record, her case is entitled to the consideration and action of Congress. We therefore report favorably upon her prayer, and recommend the passage of the bill."

Your committee, in adopting the report made by the House Committee on Invalid Pensions, think it proper to say that in a case where "chronic alcoholism" is alleged to have been the cause of death it is highly proper that evidence should be received as to the general reputation of the deceased for sobriety and temperate habits for some time prior to his death. "Chronic alcoholism" is not the result of a single spree, or even of a series of periodical sprees, but becomes a disease of the system by long-continued drunkenness; therefore, when reputable men make oath that the deceased bore the reputation of being a temperate man up to the time of his death, when their association with the deceased was of such a character that they must have had knowledge of long-continued drunkenness, had it existed, their evidence is entitled to great weight. Your committee report the bill (H. R. 3581) back with a recommendation that it pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 759.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 2089.]

*The Committee on Pensions, to whom was referred the petition of Caroline French, praying for a pension, having considered the same, make the following report:*

Petitioner is widow of Col. William H. French, U. S. A., who died May 20, 1881, while on the retired list, of apoplexy. Her son, Frank S .French, who was a captain, died September 4, 1865, as she alleges, in consequence of exposure and sickness contracted in service and in the line of duty.

The petitioner asks for a pension of $50 per month, because of the long and faithful service of her husband, the loss of her son, and her alleged necessitous circumstances. She has other children who support her, but whom she alleges have resources barely adequate for their own support.

Colonel French was a graduate of West Point; appointed second lieutenant of First Artillery July 1, 1837. He was promoted to be first lieutenant January 9, 1838, captain, September 22, 1848, major, Second Artillery, October 26, 1861, lieutenant-colonel, February 8, 1864, colonel, Fourth Artillery, July 2, 1877. He was made a brigadier-general of Volunteers October 24, 1861, major-general of Volunteers, February 1, 1863; mustered out of Volunteer service May 6, 1864; retired with the rank of colonel U. S. A., at his own request, being over sixty-two years of age July 1, 1880. He served in 1837 and 1838 in the Florida war; in the Mexican war in 1847; against the Indians in 1852. At the breaking out of the war he was stationed at Fort Duncan, Texas, which post he evacuated February 20, 1861, marching his command 480 miles to Fort Brown, where he took transports and arrived at Key West March 25, 1861, saving his battery by his prompt action. He was obliged to leave all his personal property behind at Fort Duncan, and the same alleged by the petitioner to be of the value of $1,200. In the war of the rebellion he commanded a brigade in Sumner's division, Army of the Potomac, from December 1, 1861, to March, 1862; brigade, Second Corps, to September 12, 1862; third division, Second Corps, to June 24, 1863; in command at Harper's Ferry, from June 27 to 29, 1863, and of troops guarding passes, roads, &c., to July 7, 1863, and in command of Third Corps, Army of Potomac, to March 26, 1864. His active service covered a period of forty-three years. He was a faithful, efficient, and brave officer.

In view of the long, faithful, and distinguished services of General French, the necessitous condition of the widow, and the probability, shown by evidence in the case, that the predisposing cause of apoplexy, of which General French died, existed during his active service, the committee recommend the passage of the accompanying bill, giving the petitioner a pension of $50 per month.

TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 760.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

r. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5382.]

*he Committee on Pensions, to whom was referred the bill (H. R. 5382) granting a pension to Peter J. Welschbillig, have carefully considered the same, and report:*

That the Committee on Invalid Pensions of the House of Representives of the present Congress reported upon this case as follows:

That Peter J. Welschbillig was a captain in Company G, of the Thirty-second Inana Regiment Volunteer Infantry. He enlisted August 24, 1861, and was discharged ptember 12, 1862, for disability received at the battle of Shiloh, Tenn. A shell ruck the limb of a tree, knocking the limb off, which struck him in the right side, juring him internally, and causing a fracture of the ninth and tenth ribs, resulting inflammation of lungs and adhesion. He applied for a pension March 31, 1876, and as rejected November 30, 1877, on the report of a special agent that the alleged disility was not due to the service, but existed at date of enlistment. The evidence oduced and secured by the special agent does not contain any positive proof that e injury was not contracted as alleged by the claimant. On the contrary all the idence collected by the special agent is of a "hearsay" character, while that proced by the petitioner is of a positive and straightforward character. Dr. J. Isler tesfies that petitioner was a sound, able-bodied man, not afflicted with liver disease, lung lhesion, or injury to right side, or any disease whatever at enlistment. Col. August illich, colonel of the regiment, testifies that petitioner was injured in the right side r being struck with the limb of a tree which was cut off and thrown by a shell at iloh, Tenn., April 7, 1862. Jacob Pfister, who was a private in petitioner's company, stifies that he was present at the battle of Shiloh with the petitioner, and was enged in the battle with him, and saw the limb which was cut off by a shell fall upon m and knock him to the ground, and that said Captain Welschbillig was assisted om the field of battle by three comrades, who sprang forward to his aid, and that id Welschbillig at the time of said accident was in the line of his duty; that in ating these facts he speaks from his own personal knowledge. Charles Franz Weber, ho was first lieutenant of the company, testifies to the same thing, and from his own ersonal knowledge. That the disability still exists, and has been continuous, is fully oven by the testimony of Dr. F. D. Leary, who testifies that claimant is now and is since his discharge been afflicted with adhesion of right lung caused by an injury. e also testifies he was called in October, 1862, in consultation with Dr. Punghurst, id Captain Welschbillig was then afflicted with said disease and injury, and knows his own personal knowledge that the disability has been continuous. Dr. William . Cady testifies to substantially the same thing. The board of examiners at Lafayte, Ind., rate his disability as total, and say that it is the result of a limb of a tree riking him, and say that the right side is one inch less in expansion than the left; nnot draw a full breath without pain, and not able to raise his right arm above an ngle with the body; suffers almost constant pain in side; dullness over right lung; epitation well marked; constant cough; appetite impaired; not able to perform anual labor on account of the disability.

In view of all these facts, which seem well sustained, your committee are of the pinion that Capt. Peter J. Welschbillig should be granted a pension, and report the ccompanying bill, and recommend its passage.

Your committee find the evidence on which they are required to pass to be substantially as stated in the report above set out. They find in addition, however, that Captain Welschbillig, when tendering his resignation, did not put it upon the ground that he was disabled by an injury received in the service, but gave as the reasons therefor, that during the last few weeks his health had come to such a low state that he was then unable to perform duty, and that the hearing of his left ear had lately been lost; and that neither of the surgeons who gave him certificates of disability at the time stated the fact that he had been injured, while one of them stated that "the history of his family would indicate that he is strongly predisposed to pulmonary phthisis."

There is also a considerable amount of "hearsay" evidence from members of his company who were in the battle of Shiloh to the effect that he mysteriously disappeared from said battle-field, and they believed he was not injured as alleged, but that he left to avoid danger.

Your committee can only report this case favorably by resolving all the doubts which surround it in favor of the applicant for pension. The evidence which he produces, standing alone, would be sufficient to entitle him to a pension, but the committee's faith in its reliability is much shaken by that taken by the special agent, which, while of a hearsay and negative character, furnishes reason to doubt whether the soldier's claim is entitled to favorable consideration, which is strengthened by the fact that the apparently strong evidence on behalf of the soldier's claim is *ex parte* (as under the law it necessarily is), and, therefore, entitled to less weight than if it had been tested by a cross-examination of the affiants. On the whole, however, your committee prefer to err, if at all, upon the side of liberality, and therefore recommend that the bill referred to them do pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 761.

IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2554.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2554) granting a pension to Louis Groverman, beg leave to report:*

That they find, upon examination of the original papers on file in the Pension Office, that the petitioner was a private in Company C, First United States Infantry, in the war with Mexico; that he enlisted September 29, 1845, and was discharged July 10, 1849. His application for pension was filed May 16, 1876. The records of the War Department show him to have done duty up to August 24, 1846, when he is reported "absent, sick, at Camargo"; rolls for January and February, 1847, report him present, and subsequent rolls up to 1848, in August of which year, he is reported "present, sick." The rolls for July and August report him discharged for disability July 10, 1849, at Ringgold Barracks, Texas. The certificate of disability on which he was discharged the service shows, over the signature of the officer who commanded the company, that he had been unfit for duty for forty-two days during the last two months he was in the service. The surgeon's certificate finds him "incapable of performing the duties of a soldier because of partial paralysis of the muscles of the thighs and entire paralysis of the muscles of the legs."

Two comrades of Louis Groverman testify that he was in hospital sick while he was in the service, and that they "know and remember, to the best of their knowledge and eye-witness," that he had at that time the same diseases for which he now applies to be pensioned, namely, varicose veins and heart disease, which originated in the service, in consequence of its hardships and of his exposure to the malarial climate of Mexico.

On the 23d of October, 1876, the petitioner was ordered to an examination before a board of examining surgeons of the Pension Office in Washington City, for "disability resulting from varicose veins and heart disease." A description of his condition was given as follows:

> This man has varicose veins of both legs, slight of the right, but large and tortuous of the left, extending from the knee to the ankle. Has slight enlargement of the heart. Pulse variable, with an intermission every fifteen or twenty beats. Uses tobacco, but not to excess. He says, has no paralysis now. The condition of the veins of the legs cannot be attributable to paralysis, nor of the heart. We do not believe his condition is in any way due to the service.

In this case, it will be observed, there was no application for a pension until nearly twenty-seven years after the soldier was discharged, and

then for a disability different from that for which the soldier was discharged, and of such a character that the board of examining surgeons say that it "cannot be attributable to the original disability, which no longer exists."

Under these circumstances, your committee do not think they can accept the statements of two comrades, made upwards of twenty-seven years after the soldier's discharge, and who only testify "to the best of their knowledge and eye-witness," as sufficient to establish or render probable the fact that the soldier was suffering at the time of his discharge from a disability other than that named in the certificate of discharge. They therefore recommend that the bill referred to them do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 762.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 450.]

*The Committee on Pensions, to whom was referred the bill (H. R. 450) for the relief of Elizabeth S. Seeley, have considered the same, and report:*

That Elizabeth S. Seeley is the widow of Sherman M. Seeley, late a captain in the Twenty-seventh Regiment New York Volunteers, who died in September, 1873, of an acute fever, without ever having applied for a pension. His widow applied for a pension in January, 1875, upon the ground that the remote cause of her husband's death was that his health was greatly enfeebled and his constitution undermined by disease contracted in the service, from which he never fully recovered, and hence that the acute fever proved fatal when otherwise he would probably have recovered. The Pension Bureau rejected her claim upon the ground that the disease that caused her husband's death was not the result of his military service.

Your committee do not think that Mrs. Seeley has established the fact that her husband's death is traceable to his military service, and hence they recommend that the bill referred to them do not pass.

O

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 763.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 803.]

*The Committee on Pensions, to whom was referred the bill (H. R. 803) granting a pension to Laban Conner, having duly considered the same, submit the following report:*

That at the present session of Congress the House of Representatives have passed a bill granting a pension to Laban Conner. The report of the House Committee on Invalid Pensions, which correctly states the facts in the case, and which your committee adopt as their own, is as follows:

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 803) granting a pension to Laban Conner, have had the same under consideration, and report:*

A bill granting a pension to this claimant was favorably considered by the committee on Invalid Pensions at the second session of the Forty-sixth Congress. We have again examined the evidence in the case, and find the report made to the Forty-sixth Congress fully sustained. That report is as follows:

"It appears that Laban Conner was serving in Company E, of the Eighth Michigan Volunteers; while in the service and in the line of duty, on the 15th day of June, 1864, at Petersburg, Va., while the regiment was charging the enemy the company had to seek cover in a deep rifle pit; that he fell just at the edge of said rifle pit rolling into it, and before he could raise himself up the men who were just behind him jumped on him and injured his back so that he could not get up or away without help. A few days after he was injured he was sent home to Michigan, receiving his discharge and a pass before he left Petersburg. On his way home he lost his discharge, how or where he does not know; he was not treated in any hospital for this disability, but came on to his home in Michigan, where he was treated by Dr. Isaac Dixon, his family physician, who also testifies that he was acquainted with claimant and has been since 1858, and before he enlisted and went into the service in 1864 he was a strong, healthy, and sound man. The Commissioner of Pensions rejected the claim on the ground that he was not mustered into the service. While the records in the War Department do not show his service as an enlisted man, the testimony of Capt. E. M. Hovey, of said regiment, is to the effect that he saw the claimant mustered into the service. This is corroborated by the testimony of Edward Marum, Captain of Company E, and Ben. F. Pears, orderly sergeant of Company G, same regiment, and their testimony also proves conclusively that the claimant received the disability at the time and place alleged. And Dr. G. E. Wolers, examining surgeon at Fentonville, Mich., certifies that he has examined the claimant and finds that the disability originated, as stated by claimant, in the service and in the line of duty, and that the disability is permanent and will continue to increase. He says:

"'I find soreness, on pressure, in the spine between and below the shoulder blade; also curvature of the spine. There is a pain extending from the spine to the right side just under the breast. The head and shoulders are thrown forward so much that he cannot stand erect The curvature is on the increase. There is extreme weakness in the spine, so much so that it is difficult for him to rise when down.'

"In addition to the preceding testimony in regard to the service of Laban Conner in

the regiment and company in which he served, Corporal William S. Jewell, of the company in which Conner served, testifies under oath that—

"'He is personally acquainted with Laban Conner, late a private of Company E, Eighth Regiment Michigan Infantry; knew him before he enlisted; saw him in the lines at the city of Flint, where he was mustered, together with myself and others. While drawn in line the paymaster called each man's name in the order in which it came, and he heard Laban Conner's name called, and saw him draw one month's pay and first installment of bounty, amounting in all to $73, and saw him make his mark to pay-roll, and knows that he drew his clothing, gun, and rations; he saw him in the battle of the Wilderness, and the fight in front of Petersburg, and the battle of Spottsylvania. He knows of him being disabled and discharged for his present disability.'

"And he further testifies that said Conner was a good, faithful soldier, never shirking his duty. Capt. Edwin M. Hovey, captain of the company, testifies to substantially the same thing as does Corporal Jewell, and says, in addition, that when Conner drew his first month's pay and part bounty, in all $73, he gave it to him (Captain Hovey) for safe keeping. He also testifies to the faithful service of the soldier, and to the fact of his being disabled as stated, and being discharged in consequence of the disability.

"John Reason swears on oath that he was the neighbor of Laban Conner, and when he enlisted in the Army he went with him to the city of Flint, and was there when he was enlisted and sworn into the service, and saw him after he received his bounty and first month's pay, and received from Captain Hovey, of the company in which Conner had enlisted, the said sum of $73, mentioned in the affidavit of Captain Hovey, on the order of Conner. This seems to prove clearly the service of the soldier; and the fact that his name is not on the rolls of the War Department seems to be an omission or neglect on the part of some one which has worked a great injury to this claimant.

"While the claimant may not have a *legal* right to a pension, in consequence of this omission in the records, he has an equitable one; and as he served faithfully as a brave soldier in the Army and obtained his disability while in line of duty, and his officers and comrades all testifying to his general worth as a soldier, and the medical testimony proving that his disability is such that demands a pension, your committee feel that this is a meritorious case, and waive the fact that the records in the War Department do not show his enlistment, and report in favor of the bill granting said Laban Conner a pension. They, therefore, report back the accompanying bill and recommend that it do pass."

There seems to be no question whatever but that the soldier performed the services alleged, and that he was regularly enlisted, and was discharged for disability incurred in line of duty. The only irregularity in the record appears to be that his name does not appear on the muster-roll. This committee has given relief in similar cases, and they believe that Laban Conner is equitably entitled to a pension, and accordingly report back the bill (H. R. 803) with the recommendation that it pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 764.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1048.]

The Committee on Pensions reports in favor of bill H. R. 1048, granting increase of pension to Bernard Brady, late private Company I, Fourth Regiment United States Infantry, from $24 to $50, for loss of left leg and part of right foot. The report of the House committee states the facts as follows, and we recommend the passage of the bill:

That Bernard Brady was a private in Company I, Fourth United States Infantry. From wounds received in the service, and in the line of duty, he now draws a pension of $24 per month. He applied for an increase of pension October 13, 1879, alleging the loss of left foot and the toes and heel of his right foot, rendering him totally disabled, and requiring the attendance of an attendant all the time. His application for increase of pension was rejected because his right foot was not amputated above the ankle. While it is true that he has a piece of a foot, that is, a foot without toes or heel, it is equally true that, so far as locomotion is concerned, he is worse off than if the foot was amputated. This is the view of the board of medical examiners at the Pension Office, and they so certify. He is a man virtually without feet, and, in the opinion of your committee, is entitled to the same pension now paid to men who have lost both feet in the service. Your committee therefore report back the accompanying bill and recommend that it do pass.

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H CONGRESS, } SENATE. { REPORT
1st Session. } { No. 765.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

SHERMAN, from the Committee on Finance, submitted the following

# REPORT:

[To accompany bill S. 1732.]

*Committee on Finance, to whom was referred the bill (S. 1732) to re-
ınd excessive duties levied by overvaluation of Austrian paper florin,
ıve considered the same, and respectfully report:*

his is a claim of importers from Austria-Hungary to recover about
er centum excess of ad valorem duties levied on their invoices
ıped from Austria-Hungary between June 1, 1878, and January,
). The excess of duties was due to an overestimate of the Austrian
er florin, used as a medium of estimating the value of the Austrian
er florin in United States money, the invoices all being made out in
er florins.

he error was due to a change from the gold to the silver florin, at
bsolete valuation of the latter of 45.3 cents. This error had been
ved to stand in the tables prepared by the Director of the Mint for
ral years, though the silver florin was not being used, the gold
n having then been used as the standard. This error could not be
ected by the Director of the Mint until the 1st of January following.
gold florin was then returned to as a standard in the year 1879;
in 1880 the silver florin was again declared the standard, at its true
e in the United States gold dollar, viz, 41.3. Thus the estimate of
cents was officially admitted to be 4 cents per florin, or about 9 per
um, in excess of the true value. The importers appealed to the
etary of the Treasury, but he had no power to correct the error
l the end of the year. They then brought suit, but the Supreme
rt declared that it had no power to go behind the Director of the
t's table, the table not showing but that the silver florin was esti-
ed at its true value in the gold dollar, as required by law.
ere, then, was in fact an overestimate of Austro-Hungarian invoices
seven months, which could only be redressed by Congress.
ıe Austro-Hungarian Government thereupon demanded the refund
he excess of duties to the importers as a treaty obligation. The
retary of State of the United States responded by letter of April
1881, in which, after stating the claim of Austria-Hungary, he says:

hatever may be said on the question from a purely legal standpoint, I have
hed the conclusion from that of equity and justice that the parties who present
claim through your government have been obliged to pay (in the year 1878) im-
duties on a valuation of the goods thus imported from Austria-Hungary in excess
hat that valuation should have been under the revenue laws of the United States.
ı the information laid before me, I am able to fix the excess at 4 cents per florin,
und numbers, or 9 per cent. excess of valuation.

ıe accounting officers of the Treasury Department, however, conceive that under

existing law no authority is left with that department to refund the duties thus exacted and collected, without express direction from Congress. In deference to this view, I will take early occasion to bring the subject to the attention of the President, who, I do not doubt, will direct the proper application to be made to that body for such authority as may be found essential to a just and equitable settlement of the matter.

This bill is now brought before Congress to refund to importers the amount that may be found to have been exacted from them by reason of the overvaluation of the silver florin within the period named, and its passage is recommended, as amended.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 766.

# IN THE SENATE OF THE UNITED STATES.

JUNE 27, 1882.—Ordered to be printed.

Mr. HARRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

*The Committee on Military Affairs, to whom was referred the petition of L. A. Thibout, having considered the same, respectfully report:*

The petitioner was a lieutenant in the Seventy-third United States Colored Troops. On August 26, 1863, he was dishonorably dismissed the service by a summary order. The following letters from the Secretary of War and the Adjutant-General of the Army state the facts as they appear in the War Department:

WAR DEPARTMENT,
*Washington City, June 2, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th ultimo, inclosing the petition of L. A. Thibout. of New Orleans, La., formerly second lieutenant Seventy-third Regiment of United States Colored Troops, requesting a revocation of the order of August 26, 1863, dismissing him, from the military service, and that an honorable discharge be granted him, to date from September 27, 1865, and claiming that his dismissal was illegal because he was never tried by a court-martial.

In accordance with your invitation for any suggestions I may have to make, I have to remark that at the time this officer was dismissed it did not require the sentence of a court-martial to expel an officer from the service, as the President was authorized to summarily dismiss officers.

It would seem that the evidence upon which this officer might have been convicted upon the charges preferred against him on or about the 10th day of July, 1863, "for cowardice, breach of arrest, and absence without leave," was not preserved, and to give him a hearing at this time would probably result in his vindication, however improper such result might be.

Your attention is invited to the accompanying report of the 27th ultimo, from the Adjutant-General, on the subject.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. B. HARRISON,
*Of Committee on Military Affairs, United States Senate.*

P. S.—The petition of Mr. Thibout is returned herewith.

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WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*Washington, May 27, 1862.*

SIR: I have the honor to return herewith letter, dated 16th instant, of the Hon. Benjamin Harrison, of the Committee on Military Affairs of the United States Senate, inclosing the petition of L. A. Thibout to Congress, for an honorable discharge, with request to be furnished with such information relative thereto as the records of the department may afford, and to report as follows:

Louis Arthur Thibout was mustered into the service as second lieutenant Seventy-

third Regiment of United States Colored Troops, to date September 27, 1862, to serv three years.

From the records of this office it appears that on or about the 10th day of July 1863, charges "for cowardice, breach of arrest, and absence without leave" were pre ferred against Lieutenant Thibout and other officers of his regiment, with a view to their trial by general court-martial, but upon the statement of the regiments commander that the charges could be substantiated by unimpeachable evidence, and the recommendation of General George L. Andrews, commanding Corps d'Afrique, tha these officers be at once dismissed the service, the officers named, including Lieu tenant Thibout, were dishonorably dismissed the service, for the causes stated, i Special Orders from the Department of the Gulf, dated August 26, 1863.

At this late date the department is powerless to revoke the dismissal or grant him a honorable discharge, and, therefore, any relief to which he may be entitled can onl be afforded by Congressional legislation.

I am, sir, very respectfully, your obedient servant,

CHAUNCEY McKEEVER,
*Assistant Adjutant-General.*

Hon. the SECRETARY OF WAR.

The petitioner claims that he was illegally dismissed, but in this h is mistaken. He asks that a committee be appointed "to investigat his case and refer it to court-martial." We do not think this relief ca be granted. Nearly twenty years have gone by since his dismissal, and so far as this committee are advised, no application for relief was mad until now.

We recommend that the prayer of the petitioner be not granted, an that the committee be discharged from further consideration of it.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 767.

# IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 2099.]

*The Committee on Claims, to whom was referred the petition of the executors of John W. Forney, have considered the same, and respectfully report:*

The case is well stated in the petition which we insert.

*Petition for the relief of the estate of John W. Forney, deceased.*

*To the Honorable the Senate of the United States of America:*

The petition of the subscribers, citizens of Philadelphia, in the Commonwealth of Pennsylvania, respectfully showeth:

That John W. Forney, late of said city, died on the 9th day December, A. D. 1881, leaving a last will and testament dated the 4th day of July, A. D. 1874, and admitted to probate by the register of wills in the county of Philadelphia aforesaid on the 23d day of December, A. D. 1881, and that letters testamentary were granted to the executors in said will named (a copy of which is hereto annexed, marked Exhibit A).

That your petitioners are the same persons named as executors in said will, which contains *inter alia* the following provision, to wit:

"21st item. Inasmuch as during the time that I held the office of Secretary of the Senate of the United States, I made good and paid into the Treasury of the United States, out of my own moneys, a large sum which it appeared had been misappropriated or taken by one of my subordinates out of the moneys for which I was officially accountable as such Secretary, but under circumstances and in a manner which did not reflect in any way upon my administration of said office for care and vigilance in regard to the public funds intrusted thereto, as fully appears by a report of a committee of said Senate appointed to investigate the matter, and such making good and payment by me was made promptly and without hesitation, and without question as to my legal liability to make good such loss, of which there was a strong doubt; and inasmuch as Congress has in several instances acted for the relief of those who have made payments into the Treasury under circumstances similar to my own, my will is, and I hereby direct, that it shall and may be lawful for my said executors and trustees at any time to take such measures in such way as they deem best and most expedient to obtain a repayment from the United States to my estate of the sum so paid by me; and I do this especially because some amount of the incumbrances now existing against my real estate, and of my indebtedness, and which may embarrass my executors and trustees in the settlement and management of my estate, and the trusts under this will were created and had their origin in the efforts I had to make to raise the money for such payment into the Treasury as aforesaid."

And your petitioners, in accordance with the direction in said will, hereby make application to your honorable body for a repayment of a portion of the moneys paid into the Treasury of the United States as aforesaid, and submit herewith the following facts as set forth in the report of the committee of the Senate to audit and control the contingent expenses, to whom was referred a resolution of the Senate to examine and thoroughly investigate the accounts of John W. Forney, then Secretary of the Senate, from the date of his election (a copy of which report being hereto annexed, marked Exhibit B), together with certain additional facts relating thereto.

John W. Forney entered upon the duties of Secretary of the Senate on the 15th day

of July, A. D. 1861, and remained in continuous service as such officer until the 4th day of June, A. D. 1868, when he resigned the office. In October, 1867, rumors appeared in the public prints alleging a defalcation or misuse of the funds of the Senate in the hands of the Secretary, and led to the passage of a resolution to examine the accounts of the Secretary. At the time of the appointment of the committee under the resolution and during the progress of its work, it appeared, by reference to an official statement obtained from the Treasury Department, dated April 18, 1868, that the whole sum advanced to the Secretary before that time was $4,125,713.99, and that the sums passed to his credit in said department on vouchers paid by him and audited there, together with the sums paid by him and not yet passed by the accounting officers, but examined by the committee and found correct, and, with the cash on hand, left the Secretary the creditor to a small amount, and that no losses were sustained by the government through his action. On the contrary, the evidence taken by the committee completely vindicated him from such imputation.

It also appeared, however, that on the 23d day of December, 1867, there was an actual deficit in the Secretary's accounts adjusted and unadjusted of $35,486, and that to make good the deficit as soon as it came to his knowledge the Secretary raised and placed in the official safe in his office, subject to disbursement, the sum of $35,200.

The committee say: "Whilst it was the duty of the Secretary to sign the requisitions on the Treasury, he in no case received or paid out the money drawn. The actual control and disbursement of the contingent fund of the Senate is with the financial clerk, who is one of the officers of the Senate and assigned to that particular duty by the Secretary. The financial clerkship is an office of much importance, and the person who fills it should be a man of high integrity and competency. He prepares requisitions upon the Treasury, from which all moneys are drawn, receives the money so drawn, has exclusive control of the safe in which it is kept, and makes all disbursements therefrom."

It further appears that Mr. Samuel Wagner, of York, Pa., was the financial clerk in the office of the Secretary at the time the default occurred. The committee say:

"Mr. Wagner was selected by the Secretary as a man entirely competent and reliable to perform the duties of financial clerk. While discharging those duties he was esteemed by members of the Senate and by others with whom he transacted business as a very fit man for the place he held. He had been for a long time cashier of a bank at York, Pa., and his selection by the Secretary was apparently judicious. The trust reposed by the Secretary in him would seem, therefore, to have been reasonable and within the bounds of ordinary prudence. There is no evidence that he suspected his clerk of misconduct prior to December, 1867, or that circumstances were brought to his knowledge which should have induced distrust.

* * * * * * *

"There can be no doubt that the financial clerk is responsible for the larger part, if not the whole, of the $35,486. There is no evidence which points to any one except to the financial clerk as responsible for its loss or abstraction. He had exclusive control of the moneys when the default occurred, he acknowledged a misappropriation to his own use of $20,000, and admits that he is responsible for whatever deficiency existed at the date of his resignation."

And your petitioners further say that the said Wagner was promptly removed from his position as financial clerk, immediately upon the discovery of his defalcation by the said Forney, and that all the real and personal property of the said Wagner, that he possessed to the knowledge of the said Forney, was secured by and surrendered to the latter for the purpose of applying to and liquidating the amount of money abstracted as aforesaid, and that the said Forney proceeded with diligence and prudence to realize the cash value of the property surrendered by the said Wagner as aforesaid; that, at the time, it was represented by him, the said Wagner, as ample to cover the loss occasioned to the said Forney, but it was subsequently ascertained to have been grossly exaggerated in value, producing and yielding to the said Forney about one-fourth only of the amount abstracted as aforesaid. (See affidavit hereto annexed, marked Exhibit C.)

And your petitioners submit for the consideration of your honorable body the following reasons why the prayer of this petition should be granted, viz:

1st. The financial clerk was an official of the Senate with distinct, defined duties, and his appointment was authorized to be made by the Secretary simply for reasons of convenience and propriety.

2d. In point of fact, and in accordance with law and usage, the said Wagner had, as financial clerk, the entire and exclusive control and possession of the contingent fund of the Senate, from the time the money was received by him from the Treasury Department, deposited in the office safe, to which he alone had access by means of a combination lock, until it was by him disbursed; the said Forney in no instance receiving or disbursing one dollar of said fund.

3d. The said Wagner, at the time of his appointment, was a gentleman of unblemished reputation and undoubted financial integrity. He had been a bank officer at

York, Pa., for twenty years; was possessed of property, had excellent personal habits, was courteous, industrious, intelligent, and esteemed by all the Senators to be a model officer of trained capacity, and whose honesty was wholly unsuspected up to the hour of the discovery of the deficit.

4th. The defalcation of Wagner was the result of acts and circumstances of which the said Forney had no knowledge, direction, or control, and in which he was in no way implicated. He could not have prevented it by any exercise of ordinary care and vigilance, because his official occupations necessarily prevented constant personal supervision over the acts of the financial clerk, as to the moneys committed to his care. The said Forney himself caused an exposure of the wrong, and immediately made up from his private means, without apology, question, or quibble as to his legal or equitable liability therefor, the amount of the abstracted funds; thus promptly meeting and discharging the obligation created by the letter of his bond.

5th. Whilst the official bond given by the said Forney, in the sum of $40,000, for the safe-keeping and disbursement of the contingent fund imposed upon him a strictly legal responsibility, viz, to account for every dollar drawn from the Treasury for Senatorial use whenever required, without hesitation or excuse for a failure to keep to the letter of his bond, yet this theory of official duty is not inconsistent with bills of relief subsequently enacted upon fit occasions for cause shown where, as in this case, the official who sustains a loss by the default of another is himself clear of misconduct or fault.

6th. The said Forney has always maintained that he was not equitably liable for the amount abstracted by Wagner, but preferred to pay the amount promptly into the Treasury in order to balance his accounts with that department, and to depend upon the justice and generosity of Congress to refund the actual amount of his loss when he should apply for the same.

Your petitioners are advised and believe that the said sum of $35,486 so paid into the Treasury of the United States as aforesaid has not been nor has any part thereof been refunded to the said John W. Forney, nor to any one for him, by the said the Government of the United States, but that a portion of said sum, to wit, the sum of $7,801.30 was the entire amount realized out of the proceeds of the property surrendered by the said Wagner as aforesaid and applied by the said Forney in his lifetime in part payment of his said loss. (See Exhibit C.)

Your petitioners therefore pray that the United States will refund the amount of said loss, to wit:

| | |
|---|---|
| Amount paid United States Treasury by John W. Forney | $35,486 00 |
| Amount realized by him from sale of Wagner's property | 7,801 30 |
| Balance | 27,684 70 |

and that said balance of $27,684.70, being the actual loss sustained by said John W. Forney, be granted to the petitioners, executors as aforesaid.

And they will ever pray, &c.

W. W. WEIGLEY.
JAMES FORNEY.

PHILADELPHIA COUNTY, *ss:*

James Forney, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing petition are true to the best of his knowledge, information, and belief.

JAMES FORNEY.

Sworn and subscribed before me this 3d day of April.
[SEAL.]

JAMES CROWE,
*Notary Public.*

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EXHIBIT A.

PHILADELPHIA CITY AND COUNTY, *ss:*

I, W. Marshall Taylor, register for the probate of wills and granting letters of administration in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify and make known that, on the 20th day of December, in the year of our Lord 1881, letters testamentary on the estate of John W. Forney, deceased, were granted unto W. W. Weigley and James Forney, they having first been qualified well and truly to administer the same.

Given under my hand and seal of office this 22d day of December, 1881.
[SEAL.]

WM. G. SHIELDS,
*Deputy Regis'er.*

We insert, for the further information of the Senate, the report of the Committee to Audit and Control the Contingent Expenses of the Senate, who investigated the matter at the time of its occurrence.

EXHIBIT B.

[Senate Rep. Com. No. 98. Fortieth Congress, second session.]

IN THE SENATE OF THE UNITED STATES.

MAY 6, 1868.—Ordered to be printed.

Mr. CRAGIN, from the Committee to Audit and Control the Contingent Expenses of the Senate, submitted the following report:

*The Committee to Audit and Control the Contingent Expenses of the Senate have, in compliance with the resolution of the Senate, passed on the fifteenth day of April last, examined and thoroughly investigated the accounts of John W. Forney, Secretary of the Senate, from the date of his election to the present time, and beg leave to report:*

That by reference to an official statement obtained from the Treasury Department, herewith presented, dated April 18, 1868, and marked A, it appears that the whole sum advanced to the Secretary of the Senate is $4,125,713.99; that the sum of $3,713,526.25 has been passed to his credit in said department on vouchers paid by him and audited there; that the sum of $80,503.88 drawn from the Treasury was deposited by him and is now standing to his credit on the books of the Treasurer of the United States, subject to draft, as shown by the letter of the Treasurer dated April 20, 1868; that the vouchers paid by him since November 30, 1867, and not yet passed upon by the accounting officers of the Treasury, but ready to be transmitted to them, and which we have examined, as per statement herewith presented and marked B, amount to $311,704.08, making a sum total of $4,105,734.21, and leaving a balance to be accounted for of $19,979.78. The cash on hand and vouchers paid since this investigation began, and not included in statement B, amount to $19,524.07; and there is due the secretary on account of his salary $809.74. It will thus be seen that he is a creditor to a small amount, and that no losses have been sustained by the government through his action. On the contrary, the evidence taken by the committee completely vindicates him from such imputation.

The foregoing general summary of results exhibits the general condition of the account of the Secretary of the Senate, and complies with the demand of the resolution of instruction to the committee.

But, in view of the remarks made in the Senate when the resolution was adopted, the committee have bestowed particular attention to the question of an alleged defalcation or misuse of the funds of the Senate, in the hands of the Secretary.

Inasmuch as that question had been a topic of remark in the public press, and was one well calculated to provoke serious doubts regarding the disbursement of the contingent fund of the Senate, it was clearly proper that it should be made the subject of investigation.

It appears that on the 23d of December last there was an actual deficit in the Secretary's accounts, adjusted and unadjusted, of $35,486. At that date, upon an investigation made by direction of the Secretary, the amount of the deficit was fixed at $25,530.43, but by subsequent corrections, reducing the amount, and by the addition of two items which did not appear upon the Secretary's account, but which were shown by the books of the Treasury Department, the above total of $35,486 was produced. Certain advances, however, made by the financial clerk to officers of the Senate, and the future allowance of some other rejected or suspended items, may possibly reduce this amount by about $3,000.

To make good the deficit, as soon as it came to his knowledge, the Secretary of the Senate raised and placed in the official safe in his office, subject to disbursement, the sum of $26,000, on the 23th day of December, and on the 16th, 20th, and 22d days of April of the present year, further sums amounting to $9,200.

The Secretary is under bond in the sum of $40,000 for the faithful disbursement of the contingent fund according to law, and when the deficit in his accounts was ascertained, in December, he executed a new bond, with good and sufficient sureties, which was duly filed in the Treasury Department.

By the evidence taken it will appear that the actual control and disbursement of the contingent fund of the Senate is with the financial clerk, who is one of the officers of the Senate, and assigned to that particular duty by the Secretary. He pre-

pares requisitions upon the Treasury, from which all moneys are drawn; receives the money so drawn; has exclusive control of the safe in which it is kept, and makes all disbursements therefrom.

The Secretary signs the requisitions on the Treasury, but in no case receives or pays out the moneys drawn. It will therefore be seen that this financial clerkship is an office of much importance, and that the person who fills it should be a man of high integrity and competency. It is stated to the committee by the witnesses that the duties are too great for faithful and prompt discharge by one person, in view of the increased amount and variety of expenditures in recent years, and that this fact will explain in part the delay in making settlements at the Treasury, and the difficulty in ascertaining through the financial clerk the exact condition of the Secretary's account at a given date.

Mr. J. S. Bowen, the present postmaster of Washington city, was financial clerk from the 1st of June, 1862, until the 1st of April, 1863. He was again called into the Secretary's office in December last to assist in the investigation of the accounts, and since the 23d day of that month has acted as financial clerk, and has rendered valuable service in investigating and placing the accounts in order.

Mr. Samuel Wagner, of Pennsylvania, became financial clerk in the office in April, 1863, when Mr. Bowen left, and continued to act until the 23d of December, 1867, when he resigned and left the office. There can be no doubt that he is responsible for the larger part, if not the whole, of the deficit of $35,486. He had exclusive control of the moneys when the default occurred; he acknowledges a misappropriation to his own use of $20,000, and admits that he is responsible for whatever deficiency existed at the date of his resignation. But his explanations are not entirely satisfactory, inasmuch as they leave unaccounted for the misappropriation or loss of some $12,000 of the aggregate amount before mentioned. His suggestion that there may still be corrections to make which will reduce the amount of defalcation to a large extent, is not supported by any evidence before the committee, while there is reason to accept the statement from the Treasury Department and the exhibit by Mr. Bowen, herewith reported, as substantially accurate.

Mr. Wagner was selected by the Secretary, as a man entirely competent and reliable, to perform the duties of financial clerk. While discharging those duties he was esteemed by members of the Senate and by others with whom he transacted business as a very fit man for the place he held. He had been for a long time cashier of a bank at York, Pennsylvania, and his selection by the Secretary was apparently judicious.

The trust reposed by the Secretary in his financial clerk would seem, therefore, to have been reasonable and within the bounds of ordinary prudence. There is no evidence that he suspected his clerk of misconduct prior to December, 1867, or that circumstances were brought to his knowledge which should have induced distrust. His absence in Europe during the summer of 1867, and his engrossing employments when at home, perhaps prevented that careful supervision of his subordinates which under other circumstances would have been possible. The committee think, however, that he should have insisted upon and secured a more prompt settlement by his subordinates of his accounts at the Treasury Department. It is no doubt true that in such cases delays of settlement give occasion to delinquency and tend to produce it, and the explanations given of the unsettled state of the accounts towards the close of 1867, though entitled to due consideration, do not constitute a complete excuse. There had been an unusual accumulation of accounts, mainly caused by several adjourned sessions of Congress, many bills of outlay were unapproved or unadjusted by the Committee on Contingent Expenses, and the financial clerk was probably overworked. But, notwithstanding these facts, the committee cannot think that unsettled items of disbursement should have accumulated to the extent shown by a communication from Mr. Tayler, Comptroller of the Treasury, to the Secretary of the Senate, under date of October 30, 1867, to be found in the evidence herewith reported.

Mr. Wagner repeats to the committee under oath the statement made by him when the deficiency was discovered in December. It is in brief that, being indebted to a Mr. Blagden in the sum of $20,000, and being called upon suddenly for payment, he took that sum from the contingent fund of the Senate (in the safe under his charge) and applied it upon the debt. He explains his conduct in a manner quite usual with defaulters who misuse public or trust funds, to wit: that the demand upon him was unexpected; that he was not prepared to meet it; that the public moneys under his control were conveniently at hand, and that he expected to replace the amount abstracted before its absence from the safe would be discovered.

Beyond this statement of Mr. Wagner as to his misappropriation of the $20,000, the committee are unable to ascertain what became of the money covered by or included in the deficit, unless the small items of advances and rejected or suspended items before referred to should be taken into account. As these would probably amount to only about $3,000, there remains $12,000 wholly unaccounted for. There is no evidence

which points to any one except to the financial clerk as responsible for its loss or abstraction. He disavows all knowledge as to this part of the deficiency, though not his responsibility therefor. But this question is one of interest to the Secretary rather than to the government. The Secretary incurs the loss and must bear it without remedy, unless he shall be reimbursed by the transfers of property made to him by his subordinate. In any event there can be no loss to the Treasury.

A.—*Statement showing the amount of money advanced to John W. Forney, Secretary of the Senate, and the date and amount of each sum placed to his credit under the different appropriations.*

COMPENSATION AND MILEAGE OF SENATORS.

| Date. | Advanced. | Date. | Credited. |
|---|---|---|---|
| July 16, 1861 | $30,000 00 | January 16, 1862 | $45,169 62 |
| July 25, 1861 | 18,000 00 | September 16, 1862 | 191,280 85 |
| November 30, 1861 | 50,000 00 | July 3, 1863 | 147,523 91 |
| December 11, 1861 | 60,000 00 | March 29, 1865 | 256,682 17 |
| March 4, 1862 | 20,000 00 | September 11, 1865 | 167,154 61 |
| April 1, 1862 | 50,000 00 | January 2, 1868 | 602,421 47 |
| July 1, 1862 | 28,000 00 | January 22, 1868 | 184,456 10 |
| November 28, 1862 | 50,000 00 | Balance | 226,478 53 |
| January 3, 1863 | 25,000 00 | | |
| February 21, 1863 | 30,000 00 | | |
| March 4, 1863 | 40,000 00 | | |
| December 3, 1863 | 75,000 00 | | |
| December 10, 1863 | 50,000 00 | | |
| January 19, 1864 | 50,000 00 | | |
| March 7, 1864 | 25,000 00 | | |
| May 23, 1864 | 30,000 00 | | |
| June 25, 1864 | 50,000 00 | | |
| December 2, 1864 | 75,000 00 | | |
| December 16, 1864 | 50,000 00 | | |
| February 23, 1865 | 50,000 00 | | |
| November 29, 1865 | 75,000 00 | | |
| December 6, 1865 | 75,000 00 | | |
| December 21, 1865 | 50,000 00 | | |
| March 1, 1866 | 50,000 00 | | |
| May 2, 1866 | 50,000 00 | | |
| July 27, 1866 | 75,000 00 | | |
| August 1, 1866 | 75,166 66 | | |
| November 27, 1866 | 100,000 00 | | |
| December 19, 1866 | 60,000 00 | | |
| March 1, 1867 | 30,000 00 | | |
| April 3, 1867 | 85,000 00 | | |
| April 18, 1867 | 25,000 00 | | |
| June 1, 1867 | 23,000 00 | | |
| July 1, 1867 | 23,000 00 | | |
| July 13, 1867 | 25,000 00 | | |
| August 30, 1867 | 23,000 00 | | |
| September 23, 1867 | 23,000 00 | | |
| October 29, 1867 | 23,000 00 | | |
| November 27, 1867 | 75,000 00 | | |
| | 1,821,166 66 | | 1,821,166 66 |
| Balance | 226,478 53 | | |

Upon the whole case, the committee recommend that the relief prayed for be granted.

The creation of the office of financial clerk indicated the expectation of the Senate that the funds of the Senate should be received and disbursed by him.

The other duties of the Secretary were enough to employ his whole time, and rendered it impossible for him to receive or disburse these moneys himself or to supervise his financial clerk in these functions.

Mr. Forney was fully justified by the character and experience of the financial clerk in appointing him and in confiding in him. It was wise and prudent to give him the sole charge of the safe and not to allow any other person to go to it.

While the Committee to Audit the Contingent Funds think the accounts should have been settled more frequently with the Treasury, and that unsettled items of disbursement should not have been allowed to

accumulate as they did, yet it does not appear that greater strictness in this respect would have prevented this defalcatiou.

We think the Secretary might and should have established a system of checks by books kept by a separate officer and by frequent personal examination of the clerk's balances. But Mr. Forney found no such system in existence when he came into office. He did all that ordinary prudence had been considered to demand from the beginning of the government.

We therefore recommend the passage of the accompanying bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 768.

IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1903.]

*The Committee on Pensions, to whom was referred the bill* (*S.* 1903) *granting a pension to Alfred M. Jarboe, have examined the same, and report:*

That no application for pension has been made at the Pension Office, and that no papers are on file showing the grounds upon which claimant asks to be pensioned, except that claimant received a bounty-land warrant for services in the Mexican war.

Your committee are of the opinion that claimant should make application at the Pension Office instead of asking relief by special act of Congress, and therefore recommend the indefinite postponement of the bill.

O

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 769.

IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1602.]

*The Committee on Claims, to whom were referred the petition and an accompanying bill for the relief of William H. Powell, surviving member of the late copartnership of W. H. Powell & Co., of which F. A. McDowell, deceased, was formerly a member, have had the same under consideration, and submit the following report:*

The aforesaid firm were in business as distillers at Chambersburg, in he third collection district of Ohio, from some time in November, 1868, o the 26th day of January, 1869. During this time the monthly assessments upon their business were regularly made by O. C. Maxwell, he United States assessor for that district, were promptly paid by the rm, including an erroneous over-assessment of $65.76 hereinafter mentioned, and the several amounts paid by them, aggregating $834.33, ere receipted for in full by D. W. Schaeffer, United States collector or that district.

Powell & Co. found it impossible to prosecute their business successfully on account of the scarcity of water, and the bad quality of grain then o be had, and on the said 26th day of January, 1869, finally discontinued t. The deficiency of water was so great they were unable to operate heir distillery regularly at even its minimum producing capacity, and ere obliged to reduce and then increase it from time to time, and to nake temporary suspensions to accommodate their business to the deficiency and changing supply of water.

Prior to their commencing business, and when those changes and temorary suspensions were made, and when they finally discontinued busiess, they gave the proper notice, and made the proper applications to the roper revenue officers, and obtained the proper permits required by law. he assistant assessor, however, in making returns to his superior offier of the aforesaid temporary suspensions, omitted to state in some of is certificates, what was in fact true, that there were at those times no nash, wort, or beer in the distillery or on the premises. Upon each otice of suspension or resumption of business, the proper locks, seals, nd fastenings were placed upon, and removed from, the doors, tubs, &c., by the proper officers.

After the final discontinuance of the business, Mr. Maxwell went out f office as United States assessor, and was succeeded by George G. ohnson, who, on account of technical defects and omissions in the certificates of the assistant assessor before mentioned, made a reassessment

on Form 89, for the month of January, 1869, and upon the maximum capacity of the distillery. Mr. Maxwell, who was assessor during the entire period in which Powell & Co. were in business, says, in an affidavit on file in the department:

> It was my duty to make the assessment, and it was made with full knowledge of the facts. It was reported to, and confirmed by, the Commissioner of Internal Revenue, and the parties, on my recommendation, settled the same in full and quit the business of distilling. I am of the opinion, and then was, that they were assessed to the full amount authorized by law, and believe that any reassessment, such as is made in Form 89, is erroneous, and consequently illegal.

The reassessment so wrongfully made amounted to $1,491.87, which Powell & Co. declined to pay, and the property was seized by the government and sold for $226.50, which was the sum needed to cover the expenses of seizure and sale. The government bid it in, and subsequently sold it for the same amount. Suit was also brought on the distiller's bond, and judgment obtained, after the death of McDowell, the junior partner of Powell & Co., for $1,586.56, which covered the reassessment, penalty, and interest. McDowell died in 1870, and Powell, as surviving partner, paid $206.28 on the judgment in 1874, and the Commissioner ordered that it be no further enforced.

It hereinbefore appears that Powell & Co. were assessed under the first assessment which was paid by them $834.33, but an inspection of the items of the assessment clearly shows it should have been but $768.57, establishing the commission of an error against the claimant and in favor of the government of $65.76.

A portion of the machinery and other property, after its seizure and while in the custody of the United States marshal, prior to its sale by the government, was clandestinely removed from the premises by persons unknown to Powell & Co., and has never been accounted for, returned, or recovered.

The seizure and the first and subsequent sales of the property by the government were made while the claimant was absent from the State of Ohio, were without his knowledge, and he had no opportunity to bid in the property or to procure it to be done, or to appeal for relief to the proper officer of the Treasury Department.

Your committee think that relief should be granted with respect to the over-assessment of $65.76; the amount which the government received from the sale, $226.50; and the amount collected on the bond, $206.28; making in the aggregate $498.54; and that the judgment in the action on the bond should be canceled, and both Powell & Co., and W. H. Powell as survivor, and their and his sureties, relieved from all further liability and obligation of every kind, and accordingly report back said bill with the following amendment, viz: Strike out the words "five hundred dollars" and in lieu thereof insert the words *four hundred and ninety-eight dollars and fifty-four cents.*

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47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 770.

IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1139.]

*The Committee on Claims, to whom was referred the bill (S. 1139) for the relief of the estates of James Vance and William Vance, report thereon as follows:*

This claim was favorably reported from the Senate Committee on Claims by Mr. Teller, on the 29th of May, 1878, and by Mr. Hereford February 11, 1880.

Your committee adopt the report made by Mr. Hereford, which is as follows, viz:

*The committee to whom was referred the petition of James Vance and William Vance, asking for payment for use of certain buildings at San Antonio, Tex., report as follows:*

The same matter was before the Senate in the Forty-fifth Congress, and a favorable report was made thereon by the Committee on Claims.

This claim is for rent for the use and occupation of certain buildings in San Antonio, Tex., from the 5th day of August, 1865, to the 20th day of August, 1866, as well as the rental of a certain dwelling-house from September 1, 1865, to April 30, 1866.

The principal buildings, exclusive of the dwelling-house, were five in number, containing twenty-two rooms; two of these were store-houses, each 30 feet wide by 110 feet deep, with two barracks, each 30 feet wide and 167 feet deep. These buildings had been rented before the war of the claimants, the government paying rental therefor at the rate of $625 per month.

At the time actual hostilities ceased, which was before the 5th of August, 1865, these buildings were in a damaged condition, and the claimants allege that at the request of Capt. H. S. Clubb, assistant quartermaster, they repaired the buildings at an expense of between seven and eight thousand dollars in gold; that such repairs were made for the purpose of inducing the government to rent the buildings. On the 5 h day of August, 1865, the government went into possession of the buildings before mentioned as well as the dwelling-house of the claimants.

The evidence is satisfactory on the question of possession having been given the government by the claimants.

It was in no sense a taking of possession by force, or by virtue of the war power, or without the consent of the owners. It is evident that the claimants and the assistant quartermaster understood that rent was to be paid for the use and occupation of the premises. The claimants allege that there was no positive agreement as to the amount to be paid, but it was supposed that the amount allowed would be the same as had been paid before the war. The assistant quartermaster reported the use and occupation of the premises to the department at Washington, with a diagram of the buildings, streets, &c., and under the head of "Rate of hire or compensation," entered "Rate not settled." This statement was made monthly during the time these buildings were so occupied, and the testimony shows that it was the intention of the quartermaster and the claimants that rent was to be paid at such sum as should be fixed at Washington, and there is nothing in the case that will warrant the idea that it was taken possession of by force, or without the consent of the owners first obtained. It is evident that this was the belief of the claimants (that rent was to be paid), for, in the spring of 1866, *the claimants presented* the claim for rent of the premises, and

were informed, May 9, 1866, that "under existing decision of the War Department, rent in States heretofore in rebellion cannot be paid by the Quartermaster's Department." This, the department claims, brings the case within the rule laid down by the Supreme Court in the case of Filor *vs.* United States, 9 Wallace, page 45, and this is undoubtedly correct. The case of Filor *vs.* United States only decided that there was not such a contract as would entitle the plaintiff to sue in the Court of Claims, and it must be admitted that in this case the claimants have no standing in the Court of Claims. If they had they would doubtless go into that court.

Congress has uniformly allowed rent to claimants, where the premises occupied by the Army were occupied under contract.

It is, under the provision of law, the duty of the Quartermaster's Department to furnish quarters for officers, and the Quartermaster's Department must provide storerooms, warehouses, depots for its supplies, and it cannot be said that while the Quartermaster's Department might contract for officers' quarters it could not contract for a building in which to put the stores indispensable to the existence of the Army rank and file. If Congress is justified in recognizing as valid the contract made for the convenience of the officers of the Army, and the clerical force necessary for the efficiency of the Army, it certainly will be justified in recognizing the contracts made by the same officers for the rental of buildings, without which the Quartermaster's Department would hardly have been able to discharge the duties imposed on it by law, the least of which was the furnishing quarters for officers and their staff.

The claimants were, indeed, to expend a large amount of money in repairing the buildings, putting them in condition to be occupied by the government, and under a contract with the assistant quartermaster the claimants surrendered to the government the possession of the buildings at a time when war existed only in name and not in fact.

Such contract was made out about two months after the Government of the United States had officially notified the governments of Europe that the war of the rebellion was at an end, that the authority of the United States was regarded in all of the late rebellious States. No armed force appeared against the government in the State of Texas after August 1, 1865, and the government did not after that time exercise the right (not denied to it in war) to seize the property of the citizens of disloyal States and occupy the same without compensation to the owners.

Under all circumstances, your committee think it was the duty of the government, on the 9th of May, 1866, if the intention was to repudiate the contract, to have surrendered to the claimants the possession which had been acquired under a promise to pay rent, and, not having so surrendered the premises, your committee think that it does not comport with the dignity of the government to say that such rent ought not to be paid.

The government did pay rent for the premises, exclusive of the dwelling-house, after August 20, at the rate of $5,000 per annum for a period, and subsequently at the rate of six thousand dollars per annum, and your committee think that the rent for the buildings so occupied, exclusive of the dwelling, ought to be paid at the rate of five thousand dollars per annum, and that the evidence shows that the rent of the dwelling-house was worth at least fifty dollars per month, making the total rent due the claimants the sum of five thousand two hundred dollars for the rental of the property, exclusive of the dwelling-house, and three hundred dollars for the use of the dwelling, or a total of five thousand five hundred dollars.

The committee therefore recommend that amount be allowed in full of all claims of claimants, and report the accompanying bill.

We recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 771.

# IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. FRYE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill H. R. 2013.]

The Committee on Claims, to whom was referred the bill (H. R. 2013) referring to the Court of Claims the claim of Gallus Kirchner, have considered the same, and adopt the annexed House report as a correct statement of the case. The Senate committee, Forty-fifth Congress, by Senator McMillan, made an adverse report on the same claim, using in it this language:

The memorial in this case is merely an argument for a rehearing of the case, and contains no statement that any evidence has been discovered since the report of the committee, and no additional evidence whatever is submitted.

Your committee find that additional evidence has since then been taken, tending to make certain as to the stone used by the government, its value, amount, &c. They recommend the passage of the House bill.

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*The Committee on Claims, to whom were referred the memorial of Gallus Kirchner and a bill for his relief, submit the following report:*

On the first day of July, 1864, Kirchner entered into a contract with Capt. J. M. Whitman, acting on behalf of the United States, to deliver 1,500 cubic yards, more or less, of stone, at North Vernon, Ind., to be used in the construction of the arsenal building at Indianapolis, Ind. Pursuant to this contract, he delivered a large quantity in excess of what was used in the main building, but was used by the United States in various other ways. For the stone used in the main building he was paid the contract price, but it seems he has received nothing for the remainder of the stone used. He brought suit in the Court of Claims, where he was awarded judgment for the amount that remained due him for the stone used in the main building, leaving unajudicated the stone used outside the main building, the proof not being satisfactory as to the quantity used. The court say in their opinion:

"The precise quantity of stone thus delivered is not shown by the proof, but it abundantly appears that he delivered more than the 1,500 cubic yards required of him in the contract. The books of the railroad company over whose line of road the rock were shipped show that 442 car-loads were shipped under the second contract; and the proof establishes that each car-load averaged in gross 4½ cubic yards, making in the aggregate 1,989 yards in gross. The claimant has been paid for 1,224½ cubic yards, and the balance remains unpaid. But this result rests on the average estimate in gross of each car-load shipped from the quarry, and it is impossible for the court to fix with absolute accuracy the specific quantity of stone delivered by the claimant. But vague as the proof is in this respect, it is certain that he delivered under this contract the full amount of 1,500 yards called for in it; and for this amount, less the 1,224½ yards for which he has been paid, he should recover. The stone delivered were all "dimension stone," and by the terms of the contract they were to be paid for at $5 per cubic yard, which gives for the 275½ yards still unpaid for the sum of $1,337.50, for which judgment will be entered."

Judge Loring, dissenting, says:

"I think in this case it is shown that the petitioner has been paid for all stone accepted under the contract and used in the arsenal building. But the evidence also

shows that stone required for the building was used in various ways by the United States, but how much so used is not shown, and as the burden of proof of that is on the petitioner, I think he is not entitled to judgment had, but that his case should be remanded to the docket for evidence." (See 7 Nott & Huntington, 579, *et seq.*)

It will be seen by the foregoing opinion that some of the judges desired to remand the case for further proof on the point as to how much stone was used outside the main building, the evidence showing that a large quantity of stone was actually used by the United States for which claimant has received no compensation, but the court say "it is impossible for the court to fix with absolute accuracy the specific amount of stone delivered by claimant." The memorialist now states that he is able to produce the proof by actual measurement of all the stone so used, so that the court may award him a judgment on a certainty. The evidence shows that the claimant took the contract at a ruinously low rate and will in any event lose largely by his contract. As the Court of Claims has partly adjudicated this case, and since the trial the claimant has taken evidence, and the United States has cross-examined the witness with a view to having it tried again by the court, and from the evidence it is clearly proven that the claimant is entitled to some measure of relief, they recommend that the Court of Claims be directed to hear, try, and determine the same according to law, and to render such judgment as to them shall be required by equity, justice, and the law, the same as if said claim was not barred by any statute of limitation, or any former judgment rendered by said court in this cause, and to give judgment for the fair and reasonable value of the stone used by the United States. A similar bill was favorably reported from the Senate Committee on Claims in the Forty-third Congress, second session, and also a favorable report from the House Committee on Claims in Forty-sixth Congress (No. 1743). Your committee therefore report back House bill 2013, with the words "if any" added after the words *United States* in the twelfth line, and so amended recommend that the bill do pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 772.

# IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. MILLER, of California, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 2101.]

The Committee on Naval Affairs, to whom was referred the memorial of Rear-Admiral David McDougal, United States Navy (retired), praying that he be allowed the pay of rear-admiral on the retired list, having considered the subject-matter of the memorial, beg leave to report to the Senate the accompanying bill, and to recommend that the same be passed. They also report back the memorial above mentioned, and request that the same may be printed as a part of their report.

*To the honorable the Senate and House of Representatives of the United States of America:*

Respectfully represents the undersigned, David McDougal, a retired rear-admiral of the United States Navy and a resident of San Francisco, Cal.: that while in the command of the south squadron of the Pacific fleet, in October, A. D. 1871, he was notified by the Navy Department that he had arrived at the age of sixty-two years, and that, in compliance with section 1444 of the Revised Statutes, he was placed on the retired list.

As no vacancy existed in the next higher grade (that of rear-admiral) at the time of the retirement of the undersigned, he was retired with the rank of commodore, the rank he then held.

Subsequently the undersigned was nominated and promoted on the retired list to the rank of rear-admiral for meritorious services, and to take rank from the 24th day of August, A. D. 1872, being the date of the first vacancy in the grade of rear-admiral after the retirement of the undersigned in 1871.

By section 1591, Revised Statutes, officers promoted on the retired list shall only receive the pay of the grade they were retired on, which, in his case, the undersigned considers peculiarly unfortunate, as the grade above him being limited by law, and the law of retirement compulsory, the retirement of the undersigned as a commodore was a necessary consequence.

At the present time there are seven rear-admirals who entered the service the same year (1828) as the undersigned on the retired list who were more fortunate than the undersigned in being promoted to fill vacancies on the list of rear-admirals; therefore, the undersigned thinks it but just that he be placed on the same footing with regard to pay as the more fortunate of those who hold the same rank and who entered the service the same year with the undersigned.

The undersigned respectfully requests that the same may be done by your honorable bodies.

All of which is respectfully submitted.

D. McDOUGAL,
*Rear-Admiral, U. S. N. (retired).*

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7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 773.

# IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. MILLER, of California, from the Committee on the Revision of the Laws of the United States, submitted the following

# REPORT:

[To accompany bill S. 2100.]

*The Committee on the Revision of the Laws, having had under consideration the resolution of the Senate of March 27, 1882, instructing them to "inquire what further legislation is necessary, if any, to define the meaning of the words 'Indian country,' as used in the Revised Statutes and other laws of the United States," beg leave to report:*

That in revising the statutes of the United States in 1873, the first section of the act of June 30, 1834, commonly known as the "trade and intercourse act," was dropped or omitted from the laws as revised; that the said section so omitted defined the meaning of the words "Indian country" as they occurred in the statutes, and that nowhere else in the laws of the United States has it ever been attempted to define this meaning; that on at least one occasion a United States court has decided that by this omission of the section referred to it was repealed; that under the circumstances, there being numerous laws, criminal and otherwise, passed by Congress, applicable to and referring in general terms to the "Indian country," which laws are necessary and ought to be enforced, legislation is necessary and ought to be had to define the meaning of the words "Indian country."

The committee, therefore, beg leave to submit a bill which was prepared by the Commissioner of Indian Affairs, upon the request of the committee to the Secretary of the Interior, to define the meaning of the words referred to. With the verbal concurrence of the Secretary of the Interior the committee have stricken out of the bill as originally drawn by the Commissioner of Indian Affairs the words "lands to which the original Indian title has never been extinguished, but which have not been specially reserved by treaty, act of Congress, or otherwise, for the use of the Indians, or for other purposes," because they believe that there are no such lands within the limits of the United States, and they recommend that the bill, thus amended, be passed.

The committee submit herewith draft of bill above referred to, letter from the Secretary of the Interior dated May 1, 1882, transmitting the said bill, with the report of the Commissioner of Indian Affairs upon the necessity of the legislation recommended (which said report is also herewith), and letter from the Hon. George W. McCrary, United States judge for the eighth judicial circuit, dated March 25, 1882, and addressed to Hon. G. F. Hoar, upon the subject of the necessity of such legislation.

DEPARTMENT OF THE INTERIOR,
*Washington, May* 1, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d ultimo, inclosing a resolution of the Senate of 27th March last, instructing your committee to inquire into the necessity for further legislation defining the meaning of the words "Indian country" as used in the Revised Statutes and other laws of the United States; and a letter of Hon. George W. McCrary, United States circuit judge of the eight judicial circuit, dated Saint Louis, Mo., April 8, 1882, addressed to Senator Hoar, upon the same subject; also, concurring in the views of Judge McCrary, and requesting an expression of the views of this department.

The subject having been referred to the Commissioner of Indian Affairs, I inclose herewith a copy of his letter of reply of the 25th ultimo, together with a draft of a bill which it is believed will cure the defect existing in the case.

The bill is respectfully presented for the consideration of your committee, and the resolution of the Senate and the letter of Judge McCrary are respectfully returned.

Very respectfully,

H. M. TELLER,
*Secretary.*

Hon. JOHN F. MILLER,
*Chairman Committee on Revision of the Laws, United States Senate.*

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DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
*Washington, April* 25, 1882.

SIR: I have the honor to acknowledge the receipt, by department reference for report, of a communication from Hon. John F. Miller, chairman of the Committee on the Revision of the Laws, United States Senate, dated the 3d instant, in which he incloses a letter from Hon. George W. McCrary, United States circuit judge for the eighth judicial circuit, to the Hon. George F. Hoar, in which he states that he has recently had occasion to decide that section 1 of the act of Congress of June 30, 1834, known as the trade and intercourse act (4 Stat., 729), is repealed by the Revised Statutes, portions of that act being embraced in the revision, and section 1 altogether omitted; that, therefor., there is no law defining or locating the "Indian country" as referred to in numerous statutes, which may leave the courts powerless to enforce many of the criminal statutes intended for the protection of the Indians and other inhabitants of what has heretofore been known as the "Indian country," and suggesting whether some action of Congress is not desirable in the premises; and also a resolution of the United States Senate, instructing the Committee on the Revision of the Laws to inquire what further legislation is necessary, if any, to define the meaning of the words "Indian country" as used in the Revised Statutes and other laws of the United States.

Senator Miller states that the committee concur with Judge McCrary in the opinion "that there is no act of Congress now in force defining the meaning of the words 'Indian country' or the locality or boundaries of the 'Indian country,'" and requests that you will advise them of your views in the premises, and, if you concur with them, will cause a bill to be prepared and forwarded drawn to meet the requirements of the public service, together with such suggestions as you may wish to advance.

The meaning of the term "Indian country" has been the subject of judicial inquiry and determination both before and since the revision of the statutes of the United States.

In the opinion of Judge Hillyer, United States district court for the district of Nevada, in the case of the United States *vs.* Leathers (6 Sawyer, 17), which will be noticed more fully hereafter, there is a very thorough review of legislation relating to the "Indian country," the substance of which is here given.

In the first act, "to regulate trade and intercourse with the Indian tribes" (act of July 23, 1790, 1 Stat., 137), this expression is used. No definition of it is given, but the tenor of the act shows that it was used as meaning country belonging to the Indians, occupied by them, and to which the government recognized them as having some kind of title and right. In the act of 1793 (1 Stat., 329) "Indian country" and "Indian territory" are used as synonomous.

The act of 1796, section 16 (1 Stat., 469), speaks of the country over and beyond a boundary line from Lake Erie down to Saint Mary's River as "Indian country."

The act of 1799 (1 Stat., 743) fixed the same line and called the territory beyond "Indian country." In some sections "territory" belonging to Indians is spoken of.

The act of 1802 (2 Stat., 139) uses the words "Indian country" and "Indian territory" as meaning the same thing, and in both instances it is the country set apart by treaties or otherwise for the Indians.

By the act of 1816 (3 Stat., 382) foreigners are excluded from any country allotted to Indian tribes, secured to them by treaty, or to which the Indian title has not been extinguished.

By the act of 1822 (3 Stat., 682) the President was authorized to cause to be searched the packages of traders suspected of carrying ardent spirits into the Indian countries.

Then comes the act of 1834 (4 Stat., 729), defining the "Indian country" to be "all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the Territory of Arkansas, and also that part of the United States east of the Mississippi River, and not within any State to which the Indian title has not been extinguished." Certain acts of Congress referring to the Indian Territory, meaning the country known by that name south of Kansas, when incorporated into the Revised Statutes, change the term to Indian country (R. S. 2–127, 2–138). Chapter 4, of title 28, Revised Statutes, is headed "Government of Indian country," not *the* Indian country.

In the act of 1863 (12 Stat., 793) this occurs: Treaties may be made with the tribes residing in the country south of Kansas and west of Arkansas, commonly known as the Indian country.

There are several statutes extending the provisions of the act of 1834 to territory not included in the first section of that act (see 9 Stat., 437, 9 Stat., 587, and 17 Stat., 530).

In the case of the United States *vs.* Seveloff (2 Sawyer, 311), Judge Deady held that the "Indian country," within the meaning of the act declaring it to be a crime to introduce spirituous liquors therein, is only that portion of the United States which has been declared to be such by act of Congress; and country which is owned or inhabited by Indians in whole or in part, is not, therefore, a part of the "Indian country."

August 12, 1873, the honorable Attorney-General of the United States rendered an opinion to the effect that "it is unquestionable, both as regards the region west of the Mississippi, originally included within the Indian country by the act of 1834, and as regards the region formerly included within the Territories just mentioned (Oregon, New Mexico, Utah, and Alaska), that all Indian reservations occupied by Indian tribes, and also all other districts so occupied to which the Indian title has not been extinguished are Indian country within the meaning of the intercourse laws and remain (to a greater or less extent, according as they lie within a State or Territory) subject to the provisions thereof." (14 Opinions, 290.)

In the case of the United States *vs.* Winslow (3 Sawyer, 337), it was held that the effect of the fifth section of the act of June 5, 1850 (9 Stat., 437), extending the provisions of the act of 1834 over the Indian tribes in the Territory of Oregon was to make Oregon, so far as the disposition of spirituous liquors to Indians is concerned, "Indian country."

The case of Bates *vs.* Clark (5 Otto, 204), decided at the October term, 1877, of the Supreme Court of the United States, was tried subsequent to the revision of the statutes, but arose before the revision. The act of 1834 was therefore in force, and governed that decision.

It was held that "in absence of any different provision by treaty or by act of Congress, all the country described by the first section of the act of June 30, 1834, as Indian country, remains such only as long as the Indians retain their title to the soil."

In the case of Waters *vs.* Campbell (4 Sawyer, 121), the United States circuit court, district of Oregon, held that Alaska was not "Indian country" in the technical sense of that term, any further than Congress has made it so, but that it was Indian country so far as the introduction of spirituous liquors was concerned.

It will be seen that at the time of the enactment of the Revised Statutes the boundaries of the "Indian country" had been largely changed since the passage of the act of 1834, but generally speaking, the provisions of that act had been extended to the various Indian reservations, and were held to be applicable to the several Indian tribes wherever located.

The question as to the country to which the provisions of chapter 4, title 28, of the Revised Statutes are applicable is fully discussed in the case of the United States *vs.* Leathers (6 Sawyer, 17), before referred to.

This case was a criminal one, in which the indictment charged the defendant with attempting to reside as a trader, and to introduce goods, and to trade in the Indian country without a license, in violation of section 2133 of the Revised Statutes, and also with introducing liquor into the Indian country contrary to section 2139. The indictment alleged this Indian country to be the Pyramid Lake Reservation in the State of Nevada.

In discussing the question as to whether the reservation mentioned in the indictment was Indian country within the meaning of the two sections of the Revised Statutes above named, the court says: "At the time the Revised Statutes were adopted all the country embraced by the definition of Indian country in the act of 1834 was organized into States and Territories, to which the world generally was invited to

come and settle. The same was true of all that portion of the United States lying west of the Rocky Mountains. So far as I can ascertain, all the tribes, certainly all the tribes of note within this vast territory, have been, either by treaties or agreement, dealt with by the government. The tribes, in consideration of money, goods, annuities, &c., have ceded their right to the occupation of the regions over which they had been roaming and hunting, and have had a specific portion of land or territory, or country, allotted to them for their exclusive use, called Indian reservations. On these it was and is the policy, so far as possible, to induce the tribes to settle permanently and cultivate the soil as a means of living, in lieu of their former roaming life, hunting and fishing.

"This is the general situation of Indian affairs.

"It follows that unless these various Indian reservations are Indian country, and if we are still bound by the definition in the act of 1834, there is little or no country to which the various sections of the Revised Statutes for the government of the Indian country can apply.

"But if we regard section 1 of the act of 1834 as repealed, and the portions of the public land allotted to the use and occupation of the Indians as Indian country, the sections of the Revised Statutes in which those words occur will have such operation as to carry out what I think Congress intended should be accomplished by their adoption. It is as important now as ever that the introduction of liquor into the reservations set apart for the Indians should be prevented, and trading and settling among them also. I am constrained to adopt this as the true construction of the present law, and therefore hold the Pyramid Lake Indian Reservation to be Indian country."

It is perhaps worthy of remark that this reservation was set apart for the use of the Indians by an executive order (March 23, 1874), and the right of the President to make such disposition of public lands is sustained.

This decision was affirmed by the circuit court on appeal. My own views in reference to this matter are in accord with those expressed by the court in this case. Following this opinion, there would seem to be no occasion to anticipate the difficulties feared by Judge McCrary, and, therefore, no actual necessity for the legislation suggested.

Should it be thought best, however, to define the meaning of the words "Indian country" as used in the Revised Statutes by legislative enactment, I see no objection, provided such definition corresponds with that given by the courts.

I have accordingly prepared a bill, as requested by the committee, which embodies the principles of the decision above quoted. I return herewith the letter of Senator Miller, with its inclosures, and inclose a copy of this report and of the proposed bill.

Very respectfully, your obedient servant,

H. PRICE,
*Commissioner.*

Hon. SECRETARY OF THE INTERIOR.

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[United States circuit court, eighth judicial circuit, at chambers.]

SAINT LOUIS, MO., *March* 25, 1882.

MY DEAR SENATOR: I have recently, in a case tried before me in Minnesota, had occasion to decide that section one of the act of Congress of June 30, 1834, known as the "trade and intercourse act" (4 Stat., page 729) is repealed by the Revised Statutes of the United States, portions of that act being embraced in the revision, and section one altogether omitted.

If I am right in this ruling, there is no act of Congress now in force defining the meaning of the words "Indian country," or the locality or boundaries of the "Indian country." This, you will readily perceive, leaves a large body of legislation relating to the "Indian country," much of it criminal in character and very important, without a *situs*. There are numerous statutes referring in general terms to the "Indian country," but if the section above named is repealed there is no statute locating or describing the country thus referred to. This may leave the courts powerless to enforce many of the criminal statutes intended for the protection of the Indians and other inhabitants of what has heretofore been known as the "Indian country." As these criminal statutes must be strictly construed, it is difficult to see how any of them can be executed as the law now stands. I have thought it proper to call your attention to this subject, and to suggest whether some action of Congress is not desirable in the premises.

I remain yours, very sincerely,

GEO. W. McCRARY.

Hon. G. F. HOAR,
*United States Senate Chamber, Washington, D. C.*

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 774.

IN THE SENATE OF THE UNITED STATES.

JUNE 23, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill H. R. 2317.]

*The Committee on Claims, to whom was referred the bill (H. R. 2317) for the relief of Mary Bullard, have considered the same, and submit the following report:*

The bill passed the House of Representatives on the 13th day of June, 1882.

The petition of claimant, verified by her, and filed in support of her claim, alleges a claim against the United States for a horse, valued at $100, ridden to death by her in obtaining aid to rescue captured Union soldiers.

It appears from the affidavits of General David Moore and Capt. David Wilson that Mrs. Bullard was living, in August, 1861, at her home near Etna, Scotland County, Missouri, her husband being a Union soldier. One day she overheard a party of Confederates describing the capture of some Union soldiers and making plans for capturing others. The petitioner at once mounted her best horse, leaving her children alone, and made all speed toward the Union camp, reaching there in season, and gave the information that was the means of releasing the prisoners, and capturing their captors. The claimant's horse, however, was so exhausted from the effects of the hard ride that it died next day. She borrowed one of a soldier and returned it afterward.

The petitioner asks that, inasmuch as the horse died from the effects of the service rendered to the United States, she shall be paid its value.

The first section of the act of March 3, 1849 (9 Stat. at L., page 414), and the act of June 16, 1874 (18 Stat. at L., page 193), provide for payment for horses and equipments lost by officers and soldiers in the military service from any exigency. The second section of the first-mentioned act provides that when the property of a private citizen is taken into the military service, either by contract or by imprisonment, and lost, the owner shall be paid its value. The act of July 4, 1864, provides payment for property permanently appropriated for the use of the Army.

The present case falls within the terms of neither of the above acts, yet, equitably, every consideration of the wisdom and justice of the act of March 3, 1849, applies herein with equal force.

The committee, in view of the foregoing statement of facts, report back the bill and recommend its passage.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 775.

IN THE SENATE OF THE UNITED STATES.

JULY 1, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2005.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2005) granting a pension to Elijah W. Penny, have carefully examined the same, and report:*

That the claimant, Elijah W. Penny, is now drawing a pension of $24 per month for the loss of an arm above the elbow; that in addition to said wound he was also wounded by gunshot wound in the right side, which has become serious, resulting in partial paralysis of that side.

It is shown by the sworn statement of Dr. John B. Moore, a regular physician of standing, who has been claimant's family physician for the past two years, that the gunshot wound in the right side passed near the spine, and extending to the right side of the fourth lumbar vertebra, the whole right side of his body is partially paralyzed, both as to motion and sensation; and that claimant is subject to attacks of prostration that confines him to his bed for weeks at a time, and requires the attention of an attendant at such times.

Your committee are of opinion, after careful investigation, that claimant's disability entitles him to the increase asked, and therefore recommend the passage of the bill with the amendment recommended by the House report.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 776.

# IN THE SENATE OF THE UNITED STATES.

JULY 1, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2634.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2634) granting a pension to Norton L. Newberry, have carefully examined the same, and report:*

That the House Committee on Invalid Pensions have correctly stated the facts in this case in their report (No. 1172), as follows:

Newberry, while serving as a private in Company A, Fourth Regiment United States Light Artillery, received a gunshot wound of left arm in battle at Gettysburg, July 3, 1863, necessitating amputation of the limb below the elbow, for which he was pensioned at $8 per month from date of discharge, at $15 from June 6, 1866, and at $18 from June 4, 1872, at which rate he is now paid.

In addition to the loss of the arm, pensioner is suffering to some extent from asthma, the origin of which in the service is clearly established. But because asthma does not exist in any degree sufficient so as to disqualify him for the performance of any manual labor, the Pension Office is debarred from allowing pension at a rate greater than that provided by law for the loss of the arm below the elbow. Hence the rejection of the claim for increase.

Your committee cannot agree with the conclusions reached by the House committee in recommending the increase of pension to claimant, for the reason that claimant is now receiving the full amount of pension allowed by law for the disability occasioned by loss of arm; and the disability from asthma is so slight as not to interfere with manual labor. There is, therefore, in the opinion of your committee, no grounds for further increase. The committee recommend the indefinite postponement of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 777.

# IN THE SENATE OF THE UNITED STATES.

JULY 1, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1147.]

The Committee on Pensions, to whom was referred the bill (H. R. 1147) granting a pension to Elizabeth Vernor Henry, have carefully examined the same, and report favorably, recommending its passage.

The committee adopt the statement of facts contained in the House report, as follows:

The claimant is aged about fifty-five years. Her brother, J. Wilkes Henry, was a midshipman, and was killed while serving in the line of his duty by the Fejee Islanders in 1840. Her brother, Edmund Wilkes Henry, was a commander in the Navy, and died of Bright's disease of the kidneys in March, 1873, contracted, it is believed, while in the line of his duty in the naval service.

She has another brother civilly dead. Neither of said deceased brothers left any widow or descendant. Neither parent of claimant is living, and she is very poor, and was dependent upon said Edmund Wilkes Henry at the time of his death for her support.

This application was before the House in the Forty-sixth Congress, and the bill was favorably reported upon by the Committee on Invalid Pensions, but was not reached for want of time.

The Hon. Horatio Seymour, the Hon. Ward Hunt, the Hon. John Jay, and others indorse the application as meritorious and commend the applicant as deserving of aid.

The petitioner now comes to Congress for assistance. In view of the valuable services rendered by the brothers of this petitioner, and the fact that they left no immediate relative save her, your committee deem this a proper case for a gratuity pension, and recommend the passage of the bill (H. R. 1147) granting a pension to Elizabeth Vernor Henry, amending the same by striking out the last eighteen words of the bill.

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ONGRESS, } SENATE. { REPORT
Session. } { No. 778.

# IN THE SENATE OF THE UNITED STATES.

JULY 1, 1882.—Ordered to be printed.

AIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 70.]

*mmittee on Pensions, to whom was referred the bill (S. 70) granting sion to Sarah Hayne, widow of Michael Hayne, having considered ame, report as follows:*

iael Hayne was a wealthy and prominent citizen of Maryland, who d as a seaman in the service of the United States, and performed s such (and also in the capacity of an officer, although never com- ned, on account of disability which occasioned his premature dis- ), on board the United States ships Ontario, Allegany, and Brandy- luring the late war.

of his sons entered the land service and gave their lives to the y.

ughout the war the wife and daughters of Mr. Hayne devoted ome and means to the cause of the Union, and at its close the was crippled for life, the sons were dead, and the survivors reduced plete poverty.

notograph taken during the war is produced before the committee, represents the father in an officer's uniform on the deck of his surrounded by the men under his command, also in uniform. ther is said to have exhibited unusual gallantry while in the . Admiral Porter testifies in strong terms to his bravery and tism.

family, being in destitution, came to this city, where they have since l, an unmarried daughter, of unusual intelligence and capacity, given the most diligent and self-sacrificing effort night and day to pport of her parents. By special act of Congress the father was ned above his rank at the rate of $50 a month. He died last year lisabilities contracted in the service, having been in receipt of his n only about six months. His widow survives, at the age of about y-five years, in broken health, and incapable of work of any descrip- For a long time they had rented rooms in this city, which were ned with such remaining articles as they had been able to save he era of their better fortunes. Death found them without money, e expenses of the last sickness and burial are still unpaid. The has sold out their furniture and turned them upon the street they were begging for a pension. The daughter has been hunting rk all winter, and found none. If employment was found, a con- on broken down by hardship already endured unfits her for active n. The mother cannot live long. There are two younger unmar-

ried sisters; but while others find work around the departments, these friendless girls, whose natural protectors have put their lives into the preservation of the country, beg around the departments for work, but utterly fail. This is a shame, but the committee cannot help it. The committee recommend the passage of the bill so amended as to give to the widow of Michael Hayne a pension of $16 a month for the remainder of her natural life.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 779.

# IN THE SENATE OF THE UNITED STATES.

JULY 1, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4719.]

The Committee on Pensions, to whom was referred the bill (H. R. 4719) granting a pension to Mrs. Bettie Taylor Dandridge, have examined the same, and report recommending the passage of the bill.

The facts are stated in House Report as follows:

Mrs. Bettie Taylor Dandridge is the youngest of the three daughters of Maj. Gen. Zachary Taylor, the hero of the Mexican war, and who died while serving as President of the United States. She is the widow of Lieut. Col. William W. S. Bliss, whose brilliant military record places him among the most distinguished graduates of the United States Military Academy. He was born in the State of New York; graduated from the Academy in 1833; served as professor of mathematics from 1837 to 1840; was engaged in the Florida war in 1840–'41; was nominated lieutenant of the Topographic Engineers, which he declined; was brevetted as captain, and appointed chief of staff of the commanding general in 1840; served on the frontiers until 1845, when he was appointed chief of staff to General Taylor; was engaged in the battle of Palto Alto, and in the battle of Resaca de la Palma, for gallant and meritorious conduct, in which he was brevetted as Major; was in the battle of Monterey and the battle of Buena Vista, and brevetted as lieutenant-colonel in 1847 for gallant and meritorious services in these battles; was detailed as private secretary to President Taylor in 1849, and in 1850 was appointed adjutant-general of the western division, where he died of yellow fever on the 5th of August, 1853.

In addition to this brilliant military record he received the degree of master of arts from Darmouth College in 1848; was presented by the State of New York in 1849 with a gold medal for his gallant services in Mexico; was made a member of the Royal Society of Northern Antiquarians of Copenhagen, Denmark, and an honorary member of the American Ethnological Society of New York.

Mrs. Dandridge subsequently remarried and became a widow, and is now living at Winchester, Va., in such circumstances as, your committee have reason to believe, render it necessary for her to ask to be placed upon the pension list; and in view of the great services of her father and her husband your committee unanimously concur in the propriety of this request, and recommend the passage of the bill herewith favorably reported.

47th CONGRESS, 1st Session. | SENATE. | REPORT No. 780.

# IN THE SENATE OF THE UNITED STATES.

JULY 3, 1882.—Ordered to be printed.

Mr. HARRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

On the 16th of March last there was referred to the Committee on Military Affairs the following Senate resolution:

IN THE SENATE OF THE UNITED STATES,
*March* 16, 1882.

Whereas the following provision of law, enacted in 1865, is contained in section 1754 of the Revised Statutes of the United States, to wit:

"Persons honorably discharged from the military and naval service by reason of disability, resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices":

Therefore, be it

*Resolved*, That the Committee on Military Affairs be, and they are hereby, instructed to inquire into, and report to this body—

1st. Whether said section is in full force and effect, or whether it has been in any manner repealed, modified, or rendered nugatory and void.

2d. Whether said section has been faithfully executed in appointments to civil offices under the government, or whether it has been openly and habitually disregarded and violated.

3d. Whether the terms and meaning of said section apply to provost and deputy provost marshals, quartermasters, and sutlers who were not disabled in the military or naval service of the United States, or whether they apply solely to persons who have been honorably discharged from such service by reason of disability arising from wounds or sickness incurred in the line of duty; and,

4th. Whether any additional legislation is necessary to cause the provisions of this law to be carried out and enforced by the various departments of this government.

Attest:

F. E. SHOBER,
*Acting Secretary.*

The committee have made as careful an examination of the matters presented by this resolution for their consideration as the time and means at their disposal would permit. They were not authorized to call and examine witnesses, and hence have not extended the inquiry further than to call upon the heads of the different departments for reports. The preparation of these statements has required some time, and the answers of several of the Secretaries which were addressed to the chairman of the committee were much delayed in reaching us, owing to his absence from the city on account of sickness.

1. The committee have had no difficulty in ascertaining that section 1754 of the Revised Statutes is still in force, and that it has not "been in any manner, repealed, modified, or rendered nugatory and void." This statute was enacted just at the close of the great civil war (March 3, 1865). It was a legislative expression of the gratitude of the loyal people of the country for those heroic services which saved the country

from dismemberment and dishonor, and was intended to open a way for the disabled veterans of the war to such public civil offices as they had "the business capacity" to fill with credit. It was not intended to impair the efficiency of the civil service by introducing into it those who from physical infirmity or from other causes were not able to discharge official duties in the best manner. To those to whom wounds and sickness had brought incapacity for such services, and the number of such was very great, the gratitude of the nation found expression in liberal pension laws. The committee are also of the opinion that while section 1754 relates in terms only to disabled soldiers, the spirit of the law has a much wider scope. Section 1755, enacted at the same time, is as follows:

> In grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country, by reason of wounds, disease, or the expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them preference for appointments to remunerative situations and employments.

This section, it will be observed, extends to all soldiers honorably discharged, whether for disability or expiration of their terms of enlistment, and it cannot be supposed that Congress intended to suggest to business men in their private employments a more liberal policy towards the soldiers than it was willing to adopt in the civil service of the country.

Your committee are not aware of any attempt to repeal or modify these sections of the law, and therefore report that they are still a part of the public laws of the United States, and as such are binding upon the appointing power, and should be liberally construed and faithfully enforced.

2. The second inquiry presented in the resolution opens a very wide and difficult field of investigation. The civil list of the United States numbers considerably more than one hundred thousand appointees, scattered over the entire country. The records in the departments here would furnish very meager information as to the Army service of the appointees whose names are on the register, and even if this information could be satisfactory gleaned from such sources, many months of time and a very large outlay for clerical work would be necessary to collect it. And even then, after we had learned the exact per cent. of honorably discharged soldiers in the public service, we should have to pursue the inquiry much further before we could convict the appointing power of a violation of the law. We would need also to know whether any soldier was an applicant for the particular place, and, if so, whether he possessed "the business capacity necessary for the proper discharge of the duties of such office." If it was intended that the committee should make an investigation as wide as that suggested, we must ask for further time and for power to send for persons and papers.

Your committee have thought that by inquiries addressed to the heads of the different executive departments as to the enforcement of the law by them in making appointments for service in the departments, some valuable information might be had, which, however imperfect, would in some measure answer the inquiry. In response to such inquiries, the committee have received the following letters:

TREASURY DEPARTMENT,
*March* 25, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant transmitting a copy of the resolution of the Senate, which is in the following words

[we omit the resolution, already copied], and requesting to be advised, so far as regards this Department, in relation to the inquiries in the foregoing resolution:

In reply I have to state:

First. The section of law referred to is in full force and effect in this Department, and has not been rendered nugatory and void.

Second. That the section referred to has been faithfully executed in appointments to positions in this Department, as the records show that out of 1,548 appointments and reappointments from March, 1877, to March, 1882, 803 were persons who either served in the military or naval service, and were honorably discharged therefrom, or were widows or orphans of soldiers and sailors.

In regard to the fourth section of the resolution, I would state that, so far as this Department is concerned, no additional legislation seems to be necessary to cause the provisions of the law to be carried out and enforced, as is shown by the answer to the second section.

Very respectfully,

CHAS. J. FOLGER,
*Secretary.*

Hon. JOHN A. LOGAN,
*Chairman of Committee on Military Affairs, United States Senate.*

It will be observed that the Secretary of the Treasury has included in the figures given by him the widows and orphans of deceased soldiers. While these most deserving classes are not embraced in the very terms of section 1754, the committee are of the opinion that they are so clearly within the spirit of the law as to justify the classification made. It will be seen that in the Treasury Department nearly 52 per cent. of all the appointments made since 1877 have involved a recognition of service rendered in the war by the appointee, or by a dead father or husband.

The following letter has been received from the Secretary of War:

WAR DEPARTMENT,
*Washington City, April* 11, 1882.

SIR: In reply to your letter of the 16th ultimo inclosing a copy of certain resolutions of inquiry adopted by the Senate and directed to the Committee on Military Affairs, with reference to the force, effect, and observance which, in the matter of appointments to civil offices, have been given to section 1754 of the Revised Statutes, which provides that "persons honorably discharged from the military and naval service by reason of disability resulting from wounds or sickness incurred in the line of duty shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices," I have the honor, in accordance with your request, to transmit herewith reports submitted by the heads of the bureaus of this department, giving the names of the appointees in their respective offices since the passage of the above-mentioned law—March 3, 1865—with statements showing those who have served in the Army or Navy, and those who were discharged by reason of disability resulting from wounds or sickness incurred in the line of duty.

A compilation of these reports shows that of the present number of civilian employés in the War Department 1,038 have been appointed since March 3, 1865, of which number there are 68 females and 15 boys, leaving as male adult appointees 955. Of this number 602 (or more than 63 per cent.) have served in the Army or Navy, and 137 (or more than 22 per cent. of those who served in the Army or Navy) were discharged for disability resulting from wounds or sickness incurred in the line of duty.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. JOHN A. LOGAN,
*Chairman Committee on Military Affairs, United States Senate.*

This letter from the Secretary of War is more directly responsive to the inquiry than others received, as it gives the per cent. of disabled soldiers. The committee have also learned by inquiry that of the 68 females reported as employed in the War Department, 23 are widows or orphans of soldiers. We have not thought it best to incumber this report by including the reports of the heads of the different bureaus of the War Department which are referred to in the letter of the Secretary.

The following is the response of the Secretary of the Interior to our inquiry:

DEPARTMENT OF THE INTERIOR,
*Washington, April 22, 1882.*

SIR: In response to request of the chairman of the Senate Committee on Military Affairs inclosing copy of preamble and resolution relating to section 1754 Revised Statutes of the United States, referred by order of the Senate to that committee for inquiry and report, and asking to be advised in relation to the said preamble and resolution so far as the same appy to this Department, I beg leave to state that the said provision of law has been recognized and executed in the appointments made in this Department, so far as practicable, and that the records show that of the whole force, 457 persons, or more than 34 per centum, served either in the Army or Navy, and that of the female force of the Department, 128 persons, or more than 36 per centum, are either widows, orphans, wives, or daughters of Union soldiers and sailors in the late rebellion.

Very respectfully,

H. M. TELLER,
*Secretary.*

Hon. JOHN A. LOGAN,
*Chairman Committee on Military Affairs, United States Senate.*

From the Postmaster-General the committee have received the following:

POST-OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER-GENERAL,
*Washington, D. C., March 27, 1882.*

SIR: In reference to your letter of the 16th instant inclosing a copy of a resolution referred to your committee and asking for certain information from this Department as to whether section 1754 of the Revised Statutes is faithfully executed in appointments in this Department, or whether it is openly and habitually disregarded, I have to say that in my opinion the said section is fairly executed in this Department. Of this you may be better able to judge from the following statement taken from the records of the Department:

The total number of employés in the Post-Office Department is 496. Of these, 108 are females. Of the remaining 388, 138 were either soldiers or sailors during the late war.

Considering the proportion of ex-soldiers and sailors now living to the total male adult population of the country, it seems to me the above statement shows that the section referred to is reasonably well executed in this Department.

Very respectfully,

T. O. HOWE,
*Postmaster-General.*

Hon. JOHN A. LOGAN,
*Chairman Committee on Military Affairs, United States Senate.*

It will be seen from this letter that very nearly 36 per cent. of the male employés of the Post-Office Department served in the Army or Navy during the late war.

From the Department of Justice the following has been received:

DEPARTMENT OF JUSTICE,
*March 23, 1882.*

SIR: I have the honor to acknowledge the receipt of your note of the 16th instant to which you attach a copy of certain resolutions of inquiry, and request answers to them from me, for this Department.

In respect to the first, third, and fourth of the series, I beg most respectfully to remark that they present questions of law, bringing them within the decisions of my predecessors, which have been recently followed by me, to the effect "that the Attorney-General is not authorized to give his official opinion upon a call of either house of Congress or any committee or member thereof as to any matter pending before Congress."

I inclose a copy of a letter touching this subject, addressed by me on the 26th of January last to Hon. William W. Crapo, chairman of the House Committee on Banking and Currency.

To the second inquiry I answer, that concerning the views and practice of my predecessors, in the matter inquired of, I can say nothing, because I have no knowledge;

but since I have held the office of Attorney-General there has been no instance wherein the provisions of section 1754 of the Revised Statutes have been disregarded or violated.

The applications of persons bearing the description given in that section will be considered by me, and when vacancies are to be filled they will be preferred, if they are found upon examination to have the capacity required by the law.

Very respectfully,

BENJAMIN HARRIS BREWSTER,
*Attorney-General.*

HON. JOHN A. LOGAN,
*United States Senate.*

The letter of the Attorney-General does not give the per cent. of ex-soldiers employed in his department, but from a report made to the Senate in October, 1881, it appears that a little more than 25 per cent. were of that class.

The letter of the Secretary of the Navy is as follows:

NAVY DEPARTMENT,
*Washington, May 22, 1882.*

SIR: My attention has been specially called to the resolution proposed in the Senate in relation to the observance of section 1754 of the Revised Statutes, which requires that "persons honorably discharged from the military or naval service by reason of disability, resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the prompt [proper] discharge of the duties of such offices."

Upon examination, I find that in selecting persons for appointment in the Navy Department, since the close of the late war, the claims of discharged sailors and soldiers have received full consideration, and such as have possessed the necessary business capacity have been given the preference over all other applicants for office.

The statute has, therefore, been duly obeyed, and, so far as I can learn, in full accordance with both its letter and spirit.

Attention, in this connection, is called to section 1543 and 1544 of the Revised Statutes, which specially enact that the officers and employés of the Navy Department shall be skilled in their business.

I have only to add, that this statute, giving honorably-discharged soldiers and sailors the preference in civil appointments, commends itself to my heart and judgment, and will be faithfully and fairly observed in this Department, while under my control.

Very respectfully,

WM. E. CHANDLER.
*Secretary of the Navy.*

HON. JOHN A. LOGAN,
*Chairman of Committee on Military Affairs,*
*U. S. Sena e, Washington, D. C.*

This letter does not give the figures which were desired, but by reference to a report of the Navy Department, made to the Senate in December last, we have ascertained that there were then 208 male employés in that department, of which number 72, or a little more than 34½ per cent., had served in the Army or Navy.

The letter of the Secretary of State, which follows, shows that he is in warm sympathy with the spirit of the law:

DEPARTMENT OF STATE,
*Washington, March 27, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant. inclosing resolution of inquiry referred to the Senate Committee on Military Affairs,

In reply, so far as the action of this Department relates to the requirements of the resolution, I state the following facts for the information of the committee over which you preside:

1st. That since the passage of the resolution of the 3d of March, 1865, this Department has directed its efforts to a careful and faithful observance of the letter and spirit of that resolution.

The clerks and employés in the Department comprise less than 80, and most of them require special training, which can only be gained by long experience; but even of these, 25 per cent. of the number of male clerks are discharged soldiers.

2d. In the diplomatic and consular service not less than 40 per cent. of the whole number are honorably-discharged Union soldiers, and of them at least one-half are discharged for disability.

It is the desire of this department, in the selection of its employés and the appointments to offices under its control, to comply, so far as the interests of the public service will permit, with every requirement or recommendation of Congress; but even without any suggestion from Congress it is and will continue to be the policy and disposition of the Department, in the selection of its officers and employés, to give a preference to honorably-discharged soldiers, especially those who may have been wounded or disabled in the defense of their country.

I am, sir, your obedient servant,

FRED'K T. FRELINGHUYSEN.

Hon. JOHN A. LOGAN,
*Chairman Committee on Military Affairs, Senate.*

Your committee feel that the Senate, having as a part of the national legislature helped to place section 1754 on the statute book, is as a body under peculiar obligations to enforce this law in selecting its own officers and employés. An inquiry of the Acting Secretary of the Senate upon this subject was answered by him as follows:

OFFICE OF SECRETARY OF THE SENATE,
*Washington, May* 11, 1882.

SIR: In reply to your communication of the 9th instant, requesting to be furnished with the following information: "first, the number of persons serving in the Secretary's Office, whether elected or appointed by the Secretary; second, the number of these that served in the Union or Confederate Army or Navy, and how many of them were disabled in the service," I have the honor to submit the following:

| | |
|---|---|
| Number of persons in the Secretary's Office | 27 |
| Elected by the Senate | 2 |
| Appointed by the Secretary | 25 |
| Number who served in the Union Army | 4 |
| Number who served in the Union Army and were wounded | 2 |
| Number who served in the Confederate Army | 6 |
| Number who served in the Confederate Army and were wounded | 1 |
| Number who served in neither army | 17 |

Very respectfully,

F. E. SHOBER,
*Acting Secretary.*

Hon. BENJAMIN HARRISON,
*United States Senate.*

It will be seen that only a little over 14 per cent. of the employés of the Secretary's Office served in the Union Army or Navy, while something over 22 per cent. served in the Confederate Army.

From the Sergeant-at-Arms of the Senate, the following letter was received:

SERGEANT-AT-ARMS, U. S. SENATE,
*Washington, May* 20, 1882.

SIR: In response to the inquiry made by you on behalf of the Military Committee, I have the honor to transmit herewith a "roll" of the officers and employés, with marks indicating, as far as known, the service rendered in either the Union or Confederate service; also a report of the chief of the Capitol police, and memoranda prepared by the chief engineer.

Respectfully,

R. J. BRIGHT,
*Sergeant-at-Arms, U. S. S.*

Hon. BENJAMIN HERRISON.

The roll furnished by Mr. Bright gives the name and employment of each person under him, and indicates by check-marks opposite the

names, in different colors, those who served in the Union Army or Navy, those who served in the Confederate Army, and those who saw no service in either. The committee have not thought it necessary to print this entire roll, but have summarized the information given, and find the facts to be as follows: The number of male employés under the Sergeant-at-Arms, not including the Senate pages, is 107; of these, 9 are messengers nominated by the committees which they serve, and appointed by the Sergeant-at-Arms. Of these, Mr. Bright has marked 17 persons, or a little less than 16 per cent. of his force, as having served in the Union Army, and 16 persons, or a little less than 15 per cent., as having served in the Confederate Army. He has also indicated, upon the roll furnished, those persons who were employed before he was elected Sergeant-at-Arms. From these marks it appears that 30 of the 107 persons who are reported as now employed were appointed by Mr. Bright's predecessor. Of these 30 persons retained, 8 are marked as Union soldiers or sailors. It follows, then, that of the 77 new appointments made by Mr. Bright, including the 9 made upon the suggestion of the committees, only 9, or less than 12 per cent., were appointed from that class which the statute says shall be preferred.

It appears also from the roll that of the 16 Confederate soldiers now employed only 2 were on the rolls when Mr. Bright took the office. In other words, 9 Union soldiers and 14 Confederates have been appointed.

Mr. Bright furnished the committee with the following letter from the captain of the Capitol police:

OFFICE OF THE CAPITOL POLICE,
*May* 12, 1882.

SIR: Agreeable to your instructions I have the honor to make the following report of the Capitol police force: Number of officers and men, 33; in Union Army, 17 (of this number four were wounded); in Confederate Army, 4; not in either army, 12.

Respectfully, yours,

P. H. ALLABACK,
*Captain Capitol Police.*

Hon. R. J. BRIGHT,
*Sergeant-at-Arms U. S. Senate.*

This police force is appointed by a board composed of the Sergeant-at-Arms of the Senate, the Sergeant-at-Arms of the House of Representatives, and the Architect of the Capitol.

It will be seen that the average per cent. of soldiers and sailors employed in the different executive departments (taking in the State Department the mean between 25 and 40) is 40 per cent., while the average in the Senate offices is 15 per cent. While this condition of things exists the Senate does not occupy a favorable ground from which to lecture the other departments of the government.

It may be said that the appointments under the Secretary and Sergeant-at-Arms are not within the control of the Senate; but, even under the existing rule which allows those officers to appoint and remove subordinates without the consent of the Senate, it is believed that an emphatic and unanimous declaration by the Senate of its determination to have section 1754 enforced would result in securing that end. Prior to April 17, 1879, the Senate retained some control over these subordinates. On that day the following resolution, introduced by Mr. Wallace, of Pennsylvania, was passed:

"*Resolved*, That the several officers and others in the departments of the Secretary of the Senate and of the Sergeant-at-Arms shall be appointed and removed from office by those officers respectively."

Pending this resolution Mr. Edmunds moved to amend by adding the following:

"But no officer or employé of the Senate who served in the forces of the United States in suppressing the late rebellion shall be removed except for cause stated in writing to the President of the Senate and approved by him in writing."

This amendment was rejected by the following vote:

Yeas: Messrs. Anthony, Bell, Burnside, Cameron of Pennsylvania, Carpenter, Chandler, Conkling, Dawes, Edmunds, Ferry, Hill of Colorado, Ingalls, Jones of Nevada, Kellogg, Kirkwood, Logan, McMillan, Morrill, Paddock, Platt, Plumb, Rollins, Saunders, Teller—25.

Nays: Messrs. Bailey, Beck, Butler, Cockrell, Coke, Eaton, Garland, Gordon, Grover, Harris, Hereford, Hill of Georgia, Houston, Johnston, Jonas, Kernan, McDonald, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsbury, Slater, Thurman, Vance, Vest, Voorhees, Walker, Wallace, Withers—31.

Mr. Carpenter then moved to amend by adding the following words:

"But no office or employment made vacant by the removal or dismissal of a person who served in the forces of the Union during the late war shall be filled or supplied by the appointment or employment of any person who served in the Confederate Army at any time during said war."

This amendment was rejected by the following vote:

Yeas: Messrs. Anthony, Bell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Carpenter, Chandler, Conkling, Dawes, Edmunds, Ferry, Hamlin, Hill of Colorado, Ingalls, Jones of Nevada, Kellogg, Kirkwood, Logan, McMillan, Morrill, Paddock, Platt, Plumb, Rollins, Saunders, Teller—26.

Those who voted in the negative were, Messrs. Bailey, Bayard, Beck, Butler, Call, Cockrell, Coke, Eaton, Farley, Garland, Gordon, Grover, Harris, Hereford, Hill of Georgia, Houston, Johnston, Jonas, Kernan, McDonald, Maxey, Morgan, Pendleton, Randolph, Ransom, Saulsbury, Slater, Thurman, Vance, Vest, Voorhees, Walker, Wallace, Withers.

It will thus be seen that by the adoption of the Wallace resolution the Senate lost the direct power to enforce section 1754 in the appointments under the Secretary and Sergeant-at-Arms, and not only so, but in effect consented to the removal of Union soldiers from office without cause, and that Confederate soldiers might, at the option of the Secretary and Sergeant-at-Arms, be appointed in their stead. The result of this has already been stated in general terms.

The State of the Senator who moved the resolution now under consideration has nine employés under the Sergeant-at-Arms, receiving an aggregate annual salary of $14,940, and there is one single Union soldier among them, and he is a laborer at $720 a year.

Your committee have also caused inquiry to be made of the officers of the House of Representatives as to the enforcement of section 1754 in appointments under them. We have received from the Clerk of the House of Representatives a letter, from which the following facts are taken: There are 36 clerks and assistants employed in his office, of whom 17, or a little more than 47 per cent., served in the Union Army, and one in the Confederate Army.

We are also informed by a letter from the Sergeant-at-Arms of the House that of the 7 employés in his office, 5, or a little more than 71 per cent., served in the Union Army.

The Doorkeeper of the House informs us that of 90 employés on the permanent roll 47 served in the Union Army, and 3 in the Confederate

Army. He also adds that among the total number of employés given one is a page and one a woman. Deducting these from the total number of employés, we have over 53 per cent. of Union soldiers on his force. He also adds that among the pages there are 14 who are the sons of Union soldiers.

It will be seen that of the total number of employés in the offices of the Clerk, Sergeant-at-Arms, and Doorkeeper of the House of Representatives, nearly 53 per cent. were Union soldiers.

To the third question presented for its consideration, the Committee suggest that there can be no doubt that the terms of the law apply only to such persons as, having enlisted in the military or naval service, were honorably discharged therefrom by reason of wounds or sickness incurred in the line of duty. And there is as little doubt that the law embraces in its terms all such, whether officers or enlisted men, whether provost-marshals or quartermasters, provided only that they were duly enlisted or mustered into the military or naval service, and that their disability was incurred in the line of duty. At the same time the committee believe that the soldiers whose ordinary duties directly involved the hardship and exposure of march and battle may well claim a preeminence of sacrifice and of reward. Provost-marshals were very generally appointed upon the staff of general officers serving in the field and shared the full hardships and perils of battle with their brother officers, and even the provost-marshals who served in the loyal States in connection with the draft and other like duties were not exempt from wounds, as in many localities there was a spirit of disloyalty which did not stop short of armed resistance to the national authorities. Many such officers were killed while in the discharge of their duty.

The committee are not a little surprised that any one should be in doubt whether a sutler is included within the provisions of section 1754. They would have supposed, but for the inquiry referred to them, that every one, certainly every Senator, was aware of the fact that sutlers were not mustered into the service, and so could not be honorably discharged from it. It is perhaps true, however, that, long and bloody as the war was, not every one of our people was brought sufficiently into contact with military operations to learn the true relation of a sutler to the regiment. The committee therefore report, for the information of such, that sutlers are not within the purview of section 1754, for the reason stated above.

In response to the fourth subject of inquiry, the committee report that no new legislation could be more specific and mandatory than that now in existence. We think, however, that some resolution expressive of the sense of the Senate upon the subject would, if unanimously adopted, promptly correct the inconsistency into which our own body has fallen, and would also serve to call increased attention to the subject in other departments of the government. This would probably serve a good purpose, as it cannot be denied that in individual cases meritorious soldiers have been compelled to give way to those whose claims are, by the law we are considering, deferred.

The committee, in conclusion, desire to express their own hearty concurrence in a rule which gives a deserved preference to those who cheapened their lives to save the country from death.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 781.

# IN THE SENATE OF THE UNITED STATES.

JULY 5, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1907.]

*The Committee on Claims, to whom was referred the bill (S. 1907) for the relief of John Jett, have considered the same, and report thereon as follows:*

Mr. Jett sets forth in his petition filed with your committee that at the commencement of the late civil war, and during its continuance, he resided on his farm in the town of Washington, Rappahannock County, Virginia; that on sundry days in the months of July, August, and September, 1862, at said town of Washington, he furnished certain stores and supplies, consisting of flour, corn, and hay, of the aggregate value of $1,962, for the use of the armies of the United States.

Mr. Jett furnished to your committee vouchers for the supplies furnished by him. These vouchers differ somewhat in form, but all are substantially like the following, dated July 17, 1862, viz:

DEPARTMENT OF THE SHANANDOAH,
*Near Washington, Va., July 17, 1862.*

This certifies that there have been received from the farm of John Jett, near Washington, Va., the following military supplies: Forty thousand pounds (or twenty tons) of hay.

Said supplies will be accounted for on the property return of Lt. N. G. Rutherford, Act. Assistant Quartermaster United States Army, for the Third Quarter of 1862.

The owner of said property will be entitled to be paid for the same after the suppression of the rebellion, upon proof that he has from this date conducted himself as a loyal citizen of the United States, and has not given aid or comfort to the rebels.

Done by authority of Major-General Banks. Special General Order of April 2, 1862.

N. G. RUTHERFORD,
*A. A. Q. M. 3d Brigade, Gen'l Williams' Div., & Lieut. 9th Reg't, N. Y. S. M.*

Mr. Jett avers in his petition that before the war he was an ardent supporter of the Union; that in politics he was a "Henry Clay Whig"; and that he was loyal to the United States during the war.

If Mr. Jett were one of those citizens of Virginia who "remained a loyal adherent to the cause and the Government of the United States during the war," he could have brought his action before the Southern Claims Commission and recovered.

The supplies were taken by the military authorities of the United States, under and by virtue of the war power of the government, but with the agreement that Mr. Jett would be entitled to be paid for the same after the suppression of the rebellion, upon proof that from the date of the taking of said supplies he had conducted himself as a loyal citizen of the United States, and had not given aid or comfort to the rebels.

Your committee referred the bill to the War Department for information, and in answer to such reference received the following communication from the Secretary of War:

WAR DEPARTMENT,
*Washington City, June* 13, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 26th ultimo, inclosing bill S. 1907, to pay John Jett, of Rappahannock County, Virginia, $1,982 for corn, flour, &c., furnished the United States Army in 1862, and in reply to your request for information in regard to the claim to state that it does not appear that any claim in favor of this person was ever filed in this department.

From the printed list of cases filed before the Commissioners of Claims it appears that this claimant presented a case to that tribunal, No. 9,183, for $9,935. The commissioners made their final report to Congress, March 9, 1880, transmitting therewith all cases remaining with them not included in previous reports.

An examination having been made of the Confederate archives in this department it is ascertained that John Jett, owner of a merchant and grist mill within half a mile of Washington, Rappahannock County, Virginia, signed, with others, a petition to the Confederate Secretary of War for the detail of William H. Crompton to superintend the mill, and make flour and meal for the citizens and for the Confederate Army; also another petition to the same officer for the detail of William P. Hamlink to superintend a factory in the county of Rappahannock, Virginia, for the manufacture of woolen goods for the Confederate Army and for citizens of the county. The petitions were not dated, but were received at the Confederate War Department, November 29, 1862.

There have been found among the Confederate records the receipts of John Jett for money received in payment for provisions furnished the Confederate Army as follows:

July 26, 1863, at Bush River Mills, 1 barrel and 6 pounds of flour, $25.
August 14, 1864 (location not given), grazing 2,300 horses, $115.
March 30, 1863 (no location given), 40 bushels corn, $100.
January 16, 1864, at camp near Timberwell, 80 bushels rye, $160.
Richmond, August 20, 1863, 40 bushels corn and 4 cords of wood, $60.
April 27, 1863, at Washington, Va., 8 barrels of flour, $140.
November 28, 1861, at Warrenton, Va., 15 beef cattle, $487.56.
April 26, 1863, at Culpeper Court-House, 20 barrels of flour, $350.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. ANGUS CAMERON,
*Chairman Committee on Claims, House of Representatives.*

It appears from the letter of the Secretary of War that Mr. Jett did file a claim before the Southern Claims Commission to recover for supplies furnished by him for the United States Army. It does not appear whether or not the supplies for which Mr. Jett now claims were included in his claim made before the Southern Claims Commission.

By the second general report made by the Commissioners of Claims, December 10, 1872, it appears that John Jett's claim for $9,935 was wholly disallowed by said commission.

We assume that Mr. Jett made claim before the Commissioners of Claims for all the supplies furnished by him for the Army of the United States, and, therefore, that the supplies for which he now asks payment were passed upon and rejected by said commission.

If Mr. Jett remained a "loyal adherent to the cause and the Government of the United States during the war," he could have recovered before the Southern Claims Commission. If he did not so remain loyal, he is not entitled to recover under the conditions upon which the supplies were furnished.

In view of the facts disclosed in the letter of the Secretary of War, we cannot recommend the passage of the bill.

We recommend that the claim be disallowed, and the further consideration of the bill be indefinitely postponed.

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 782.

# IN THE SENATE OF THE UNITED STATES.

JULY 5, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1750.]

*The Committee on Pensions, to whom was referred the bill (S. 1750) granting an increase of pension to Mrs. Ann W. Mulvey, have considered the same, and report:*

That Ann W. Mulvey is the dependent mother of Francis S. Mulvey, late of Company D, Fifth New Jersey Volunteers, and is receiving a pension as such dependent mother at the rate of $8 per month, and has been receiving such pension since December, 1863. She now claims to have lost two other sons in the war, to wit, James W. Mulvey and Augustus J. Mulvey, both of Company D, Eleventh New Jersey Volunteers, and asks an increase of pension to $20 per month.

There is no evidence before your committee respecting the service or death of the two last-named soldiers, and if there was such evidence our committee are unable to see upon what principle such increase could be awarded, and therefore recommend that the bill do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 783.

IN THE SENATE OF THE UNITED STATES.

JULY 5, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 290.]

*The Committee on Claims, to whom was referred the bill (S. 290) for the relief of John Taylor, have carefully considered the same, and report thereon as follows:*

The bill provides for the payment of $10,000 to Mr. Taylor in full for horses and mules taken from him in Cooper County, in the State of Missouri, by the military authorities of the United States, on the 30th day of September, 1861, and used by the military forces of the United States for military purposes.

Mr. Taylor, during the war, and prior and subsequent thereto, resided in Cooper County, Missouri. When the war began he was an extensive and wealthy farmer.

In September, 1861, the United States military forces, in said Cooper County and the adjacent parts of Missouri, were greatly in want of horses and mules for military purposes. Thereupon a military order was duly made directing that horses and mules belonging to rebels and rebel sympathizers in that vicinity be seized. Two of Mr. Taylor's sons were then in the rebel army, and he was regarded as a pronounced and emphatic rebel sympathizer.

Pursuant to the said order, on the 30th day of September, 1861, certain horses and mules, the property of Mr. Taylor, were seized and taken by the United States military forces, and the same were used for military purposes. The officers who made the seizure refused to give Mr. Taylor vouchers for the property taken, and no vouchers were at any time given for said property so seized and taken.

In 1865, Mr. Taylor presented his claim to the Quartermaster-General, under the act of July 4, 1864. The claim was wholly disallowed by the Quartermaster-General. The Quartermaster-General, in his decision, uses this language, viz:

> A thorough investigation of this case has been made, and the Quartermaster General is advised that John Taylor was notoriously disloyal to the United States Government during the late rebellion, and therefore is not entitled to compensation under the act of July 4, 1864.

Since the claim has been pending in Congress, a good deal of testimony has been taken by claimant. Claimant's deposition has been taken, and quite a number of other affidavits, mainly in support of claimant's loyalty, have been taken and filed with your committee. No testimony has been taken upon the part of the government since the claim was decided by the Quartermaster-General.

It appears from Mr. Taylor's affidavit that in January, 1862, he was arrested as a disloyal man by Major Tarrant, commanding a squad of Iowa cavalry, but that he was paroled the next day.

It further appears from Mr. Taylor's deposition, that in April, 1862, he was again arrested by a squad of men belonging to General Loan's command, and that he was detained as a prisoner for about four months. Mr. Taylor very frankly states in his deposition that he was in sympathy a Southern man. Two of his sons were in the Confederate army. His barn and other property was burned by Union partisans, and he, as a Southern sympathizer, was forced to leave Cooper County and to go to Saint Louis, where he remained until the close of the war. The property was taken by the military forces of the United States, under and by virtue of the "war power." When it was taken, actual and flagrant war existed in Cooper County. If Mr. Taylor were loyal, the government, were it not for said act of July 4, 1864, would be under no legal obligation to make compensation for the property.

It satisfactorily appears that during the war Mr. Taylor was regarded by the military authorities of the United States in his own neighborhood as disloyal. The Quartermaster-General found that he was "notoriously disloyal"; and we are not prepared to say, even in the light of the evidence since taken by the claimant, that the finding of the Quartermaster-General was erroneous.

We recommend that the claim be disallowed, and that the bill be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 784.

IN THE SENATE OF THE UNITED STATES.

JULY 5, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2627.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2627) for the relief of Ann Stuchell, have had the same under consideration, and report:*

That Ann Stuchell is the mother of Christopher Stuchell, late a private in Company A, Sixty-first Regiment Pennsylvania Volunteers.

That said soldier, while in the service, received an injury to his right eye, the same being powder-burnt at the battle of Fair Oaks May 31, 1862, by reason of which he was discharged the service. The soldier was blind in the other eye at the time of enlistment, and subsequent to discharge became totally blind, for which he was awarded, April 22, 1873, a pension at the rate of $8 per month from July 19, 1862, to August 8, 1866, and $25 per month after the latter date. But the soldier had died the first week in September, 1872, some six months prior to the adjustment of the soldier's pension claim.

The evidence quite clearly establishes the fact that the soldier died intestate, leaving neither children nor widow; that from the time of his discharge he lived with his father, Francis Stuchell, the husband of Ann Stuchell, and that his father and mother cared for and supported him, supplying all his necessities and bearing the expenses thereof. That in addition to the maintenance of the soldier his said parents expended considerable sums in the way of expenses in sending their said son to New York, Philadelphia, and Pittsburgh for treatment; that for several years it was necessary that said soldier should be most of the time accompanied by an attendant, the expense of which was borne by his parents. That in June, 1879, the soldier's father, Francis Stuchell, died insolvent, leaving nothing in the way of property for the support of his wife, Ann Stuchell, the mother of the soldier, except what she was able to claim under the $300 exemption clause in the Pennsylvania statutes. It also appears that, under the laws of Pennsylvania, Ann Stuchell is the only heir of the said soldier.

The question of whether the pension could be paid to the heirs of the soldier was submitted to the Secretary of the Interior, and under date of April 15, 1873, he writes to the Commissioner as follows:

> I have carefully examined the evidence in the case, and am of the opinion that Stuchell was during his lifetime entitled to a pension in accordance with the certificate, which was signed *but never issued.*
>
> Inasmuch, however, as claimant is now dead and has left neither widow nor minor child, I am of opinion that the claim should be adjusted in accordance with the pro-

visions of section 25 of the act of March, 1873, by the payment of a sufficient amount "to reimburse the persons who bore the expenses of the last sickness and burial of the deceased," provided he did not leave sufficient assets to meet such expenses.

Your committee recognize the fact that the evidence in this case strongly appeals to their sympathy, but if relief is to be granted in this and like cases it must be done upon the principle that the heirs at law in general of a deceased soldier shall be entitled to claim and receive the pension which has accrued at the time of the soldier's death, and this, if done under any circumstances, should be by general and not by a special act.

Therefore your committee recommend that the bill do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 785.

# IN THE SENATE OF THE UNITED STATES.

JULY 5, 1882.—Ordered to be printed.

Mr SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1694.]

*The Committee on Pensions, to whom was referred the bill (S. 1694) granting an increase of pension to Grace F. Edes, have had the same under consideration, and respectfully report:*

That Grace F. Edes is the widow of Benjamin Long Edes, who at the time of his death held the rank of lieutenant-commander in the Navy, and who was killed August 29, 1881, by the premature discharge of a torpedo at the torpedo station at Newport, R. I. Mrs. Edes is now drawing a pension of $30 per month, and $2 per month for her two children.

The death of Lieutenant Edes was sudden, and his widow is represented to be in somewhat straitened circumstances, but your committee are unable to see anything in her case which should make it exceptional, and therefore recommend that the bill do not pass.

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H CONGRESS, } SENATE. { REPORT
1st Session. } { No. 786.

# IN THE SENATE OF THE UNITED STATES.

JULY 5, 1882.—Ordered to be printed.

r. HOAR, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1931.]

*Committee on Claims, to whom was referred the bill (S. 1931) for the elief of Agnes W. and Sarah J. Hills, have considered the same, and espectfully report:*

hat the facts in this case are set forth in the annexed report from Committee on War Claims of the House of Representatives, which r committee adopt, and recommend that the bill do pass.

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RANNEY, from the Committee on War Claims, submitted the following report (to accompany bill H. R. 6182):

*Committee on War Claims, to whom were referred the bills (H. R. Nos. 692 and 843) for the relief of Sarah J. Hills and Agnes W. Hills, report as follows:*

t appears from the papers in the case, which are very voluminous, that General ler, while in command at New Orleans, suppressed and took possession of the True ta newspaper for a violation of a proclamation, and that the property was occupied used for printing purposes for the Army, and a paper issued publishing orders, clamations, &c.

eneral Butler was finally succeeded in command at New Orleans by General N. P. ks, who, by special order No. 40, dated February 9, 1863, granted permission to workmen employed on the Daily Delta to continue its publication until furth r ers, under the management of its foreman, one Henry Green.

n the following day, by special order No. 41, General Banks directed:

Paragraph 10. The newspaper and job office of the Daily Delta, together with the sses, paper, type, ink, materials, &c., will be turned over to Lieut. Col. Alfred C. ls, Fourth Regiment Louisiana Native Guards, and to Albert G. Hills, esq., who charged with the publication of the Daily Delta newspaper and the management he job office from this date."

n March 5, 1863, by special order No. 64, General Banks directed:

Paragraph 6. Lieut. Col. Alfred C. Hills, Fourth Louisiana Native Guards, and st Lieut. Albert G. Hills, Fourth Louisiana Native Guards, are detailed for special y in this city (New Orleans) to take charge of the Era newspaper and job office, late, the former from the 23d, and the latter from the 20th ultimo (February)."

t appears from the papers that these officers remained in the service, one until May, 3, and the other until July, 1863, at which dates they resigned their commissions. they continued in the management and charge of the Era. The Era was the same blishment as the Daily Delta, the name only having been changed.

n October, 1863, under the orders of the President of the United States directing tured and abandoned property, not required for military purposes, to be turned r by the military authorities to the special agents of the Treasury Department, eral Banks's quartermaster, Colonel Holabird, turned over this property to B. F. nders, special agent of the Treasury Department, but on the 25th of October, 1863, eral Banks, by a letter to Mr. Flanders, setting forth the necessity of having a

newspaper for the publication of his proclamations, orders, &c., withdrew the property from Flanders, revoking Colonel Holabird's action.

On the 16th of March, 1864, General Banks, by special order No. 67, directed:

"Paragraph 3. The editors of the Era, Messrs. Hills & Hills, being unable to continue the business of publication together, are relieved from the operations of the order issued in regard to the management of the Era. The conducting of the paper is hereby assigned to Messrs. J. W. Fairfax and T. G. Tracy, employés in the office, to be conducted under the same general regulations and instructions given to the Messrs. Hills by paragraph 10 of special order 41, of 1863, from these headquarters, and by letter dated February, 1863. Capt. Stephen Hoyt, mayor, Col. Frank E. Howe, and James T. Tucker are hereby appointed to settle the affairs of the concern, and will report their judgment to these headquarters for confirmation."

On the 7th of April, 1864, the commission named above made a report, which is as follows:

"The undersigned, appointed a commission by special order 67, Department of the Gulf, a copy of which is herewith inclosed, to settle the affairs of the Era concern, have the honor to respectfully report that after an investigation into the affairs of the Era, they recommend that the management and conducting of the paper known as the Era be turned over to Messrs. J. W. Fairfax and T. G. Tracy, now and for a long time past employés of the Era, it however being understood that the status of the government in regard to the management of the paper and the office is in no way changed by the action of the commission, or rather by its recommendation. We do this because we believe that it is impossible and impracticable to settle the differences between the Messrs. Hills & Hills. To do this it seems to be necessary for the government to advance to the Messrs. Hills & Hills, as due them at the date of the order (March 16, 1864), for stock in the office as below mentioned, exclusive of course of all the type and material in the office belonging to the government, or as left by Messrs. Clark & Brown at the time of the possession given to Hills & Hills, the sum of $7,561.80.

| | |
|---|---|
| Material and type in the newspaper office | $2,500 00 |
| Type and material in the job printing office | 1,900 00 |
| News printing-paper on hand | 2,900 00 |
| Sundries | 261 80 |
| | 7,561 80 |

"Say $7,561.80, the government being held secure not only by this amount of stock now on hand, but also by deducting this amount from the bills that are first due the Era for the public printing and advertising, as was done in the case of Messrs. Hills & Hills, who thus liquidated the claims of the government against them at the time of their taking possession of the office. * * *

"STEPHEN HOYT.
"FRANK E. HOWE.
"JAMES T. TUCKER."

This newspaper establishment was carried on by the Messrs. Hills until the 16th of March, 1864, a period of about thirteen months. During the period this newspaper establishment was under the control of the Messrs. Hills—from the 10th of February, 1863, to the 16th of March, 1864—large quantities of material necessary to the operations of the office were purchased by them, and, at the time of the transfer of the establishment to their successors under the military order above referred to, a certain quantity of this material remained on hand unexpended and unused. For the value of this material, consisting of type, material, and paper, a claim was made by the Messrs. Hills against the government, amounting to $10,779.30; and, on the giving up of the newspaper establishment under the order of General Banks by the Messrs. Hills, a commission was appointed by the department commander to make an estimate of the value of the materials on hand, as had been done when they took possession, the object of the survey being to ascertain whether the then value of the materials exceeded or fell short of its amount when the establishment was turned over to them. By the report of this commission the amount of the claim of the Messrs. Hills was reduced to $7,561.80.

Subsequently, on the 23d of November, 1864, an order was issued by General Hurlbut, the department commander who succeeded General Banks, appointing a board of survey to ascertain whether the Messrs. Hills owed anything to the government for rent of material in the newspaper and job office used by them during the period they had possession. This board of survey made a report to the effect that $1,950 was due on account of rent of such material.

It may be well to remark, in this connection, that the Messrs. Hills distinctly understood that no rent was to be charged for the use of the materials to be used by them, as the publication of a loyal newspaper in such a city and at such a time was deemed amply sufficient to compensate for the value of all materials so used.

General N. P. Banks makes the following statement concerning the claim of Messrs. Hills:

"During the early part of the war there were several newspapers published in New Orleans, all hostile to the government, and very free in the expression of their views when it was thought to be safe. Several of these journals were suppressed. That left upon the hands of the government a considerable quantity of printing material, presses, &c. In February, 1863, Col. A. C. Hills, formerly of the New York Evening Post, and Mr. A. G. Hills, of the Boston Journal, desired to use some of these materials for the publication of a daily journal in support of the government. Such a paper was greatly needed for the publication of proclamations, circulars, military orders, and the news from different parts of the country, of great interest to the people, and constantly misrepresented by the Southern journals. The property was rightfully in possession of the military authorities, and could not have been properly used except by their consent. The use of these materials was accorded to these gentlemen for the purpose stated, and they published a very spirited and useful journal for more than a year. The materials they used and the building assigned to them were unoccupied and worthless to the government for any purpose whatever; they could not have been rented, except for speculative purposes, or with a view to opposition to the policy of the government, for any sum whatever. The enterprise they had undertaken was successful, and a considerable amount of printing material was added to the stock of government property during this period. The material added to the stock of type, &c., was indispensable to complete the equipment requisite for the publication of their journal; without these additions the material would have been worthless for newspaper purposes. In March, 1864, a disagreement occurring between the Messrs. Hills, I ordered them to turn the property over to Tracy and Fairfax, men employed in the office, and appointed a commission to settle their affairs. After a careful examination of all the property, the old and the new, the commission, composed of just and careful men, with a proper regard for the interests of the government, reported that the printing material added to the government stock had cost several thousand dollars; the exact amount will be shown in the report. In November, 1864, while I was in the North on leave of absence, a board of survey was appointed to ascertain what amount, if any, might be due from the contractors of the journal to the government for rent of property and building. This board reported that the sum of $1,950 was due from them. It was never my intention that any rent, either for material or building, should be charged to them or paid by them, as at the time they took the property it would have been worth nothing to anybody except for the purposes stated above. The property added to the printing material belonging to the government was purchased by them out of their own funds, and it belonged exclusively to them; they were not expected to account for and pay it over to the government, nor was the government under any obligation to make good any claims that might exist against them. They were to have all the profits and take all the chances of loss and gain, and be responsible for all losses. They were not agents of the government, but acting as owners, and as such, with all the rights of the latter. They were under no obligations to the government, except to return in good condition the property which was intrusted to them. They had the use of the material and the rent of the building free; beyond that the government was under no obligation to them whatever. Suit was afterwards brought by the successors of Hills & Hills against the supervising agent of the Treasury Department who dispossessed them of the property, in the court of the United States of the district of Louisiana, and decided in their favor after a full review of all the facts. This was a just decision, perfectly in conformity with the true statement of the facts. It is unnecessary for me to speak of the object had in view by the parties who pursued these men and who sought possession of this property."

General Hurlbut, in a letter dated at Washington, D. C., February 26, 1879, says:

"The board of survey was ordered by me on the official report of Mr. B. F. Flanders. The facts stated by General Banks were not presented before the board or known to me as the approving officer. Had they been presented I have no doubt the decision would have been in favor of the Hills."

The Messrs. Hills have both died, and the claim is now prosecuted by the widows of the deceased.

The committee are of opinion that the sum of $7,561.80 is justly due the claimants, and report a substitute for the bills (H. R. 692 and 843) appropriating that amount, and recommend its passage.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 787.

## IN THE SENATE OF THE UNITED STATES.

JULY 6, 1882.—Ordered to be printed.

Mr. HOAR, from the Committee on Patents, submitted the following

# REPORT:

[To accompany bill S. 1812.]

*The Committee on Patents, to whom was referred the bill* (S. 1812) *for the relief of Michael H. Collins, have considered the same, and respectfully report:*

Michael H. Collins invented a kerosene-oil-lamp burner, for which letters patent were issued to him September 19, 1865. The invention is of great public utility, as it removes all danger from explosion of kerosene lamps to which it is attached. It is also a great convenience, as where it is used the glass chimney does not become heated at the bottom, and may be removed or adjusted with the bare hand.

Since the invention, nearly all the burners in use embody its principles.

Collins was several years in perfecting it, trying many experiments, and having numerous forms of chimneys and lamps constructed as experiments before he succeeded. He has used all due and reasonable diligence to obtain remuneration. But his invention has been extensively pirated, and he has been compelled to resort to constant and repeated suits. He has not kept accounts, but we are entirely satisfied that the receipts from sales of his patent have been exhausted thereby, and that he has received no remuneration beyond his expenses and a sum not exceeding, in all, thirty-five hundred dollars.

The extension will cause no perceptible burden upon the public. The royalty heretofore reserved has been 5 cents per dozen burners.

We therefore report the accompanying substitute for the bill, and recommend its passage.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 788.

# IN THE SENATE OF THE UNITED STATES.

JULY 6, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 2049.]

*The Committee on Claims, to whom was referred the bill (S. 2049) for the relief of John P. Walworth, having examined the same, make the following report:*

That John P. Walworth was, in 1863, a resident of Chicot County, Arkansas, who faithfully adhered to the cause and government of the Union, gave no voluntary aid or encouragement to the rebellion or to persons engaged therein, but throughout the war remained loyal to the Government of the United States.

In the month of August, 1863, and previous thereto, he was a depositor in the Louisiana Bank of New Orleans to the amount of $4,700, as shown by the books of said bank and by the records of the Treasury Department, which contain the names of the depositors of said bank at the time such deposits were seized by the military authorities of the United States under the following circumstances:

On the 17th August, 1863, Major-General Banks, then in command of the Department of the Gulf, issued Order No. 202, requiring the several banks and banking associations of New Orleans to pay over without delay to the chief quartermaster of the Army, or to such officer of his department as he might designate, all money in their possession belonging to or standing upon their books to the credit of any and all persons engaged in rebellion against the United States or of the public enemies. The order declared that these funds would "be held and accounted for by the Quartermaster's Department, *subject* to the *future* adjudication of the government."

Under and in obedience to this order the Louisiana Bank of New Orleans paid over to S. B. Holabird, then being chief quartermaster at that post, all the funds covered by said order, on deposit in said bank, including said deposit of $4,700 belonging or due to said Walworth. This payment was made in the bank notes of the issue of said bank, which were sold at public vendue under military order at 60 cents on the dollar in par funds, and the proceeds of said sale were afterwards covered into the Treasury of the United States, as appears from the records of the Quartermaster-General's Office and of the accounting officers of the Treasury Department. The amount actually realized by the government from this seizure of Walworth's funds was the sum of $2,820. No judicial proceedings were ever instituted by or on behalf of the government to confiscate or condemn either the funds of Walworth received from the bank or the proceeds thereof. The present bill pro-

poses to return or restore to him, without interest, the $2,820 which the government received as aforesaid.

The single question presented in the case is whether there is now any legal duty or equitable obligation on the part of the government to make such restitution. The object and purpose of Order No. 202, under which Walworth's deposit was turned over, was not to supply military wants and necessities, but simply to impound and confiscate the moneys of public enemies. By reason of his residence in Arkansas, Walworth occupied constructively the relation of enemy, but was in fact loyal to the government. He did not therefore fall within the spirit and intent of the order. His funds were certainly not subject to seizure and confiscation under the confiscation acts of Congress. But assuming that his technical enemy relation by residence in a rebellious State would have authorized the confiscation of his funds on deposit in New Orleans, the question is presented whether the commanding general of the department could, by military order, enforce such confiscation.

This is not an open question. The Supreme Court of the United States, in the case of Planter's Bank *vs.* Union Bank (16 Wallace, p. 494 to 497), had occasion to pass upon the validity of Order No. 202; and it was there decided that General Banks had no authority to make said order, and that it was wholly invalid and worked no divestiture of the owner's right and title to the funds seized thereunder. The following extract from the opinion of the court will show the reasoning and principle on which its decision was rested:

> The validity of the order (No. 202) is, therefore, the first thing to be considered. It was made on the 17th August, 1863. Then the city of New Orleans was in quiet possession of the United States forces. It had been captured more than fifteen months before that time, and undisturbed possession was maintained ever after its capture. Hence, the order was no attempt to seize property "*flagrante bello*," nor was it a seizure for immediate use of the Army. It was simply an attempt to confiscate private property, which, though it may be subjected to confiscation by legislative authority, is, according to the modern law of nations, exempt from capture as booty of war. Still, as the war had not ceased, though it was not flagrant in the district, and as General Banks was in command of the district, it must be conceded that he had power to do all that the laws of war permitted, except so far as he was restrained by the pledged faith of the government or by the effect of Congressional legislation. A pledge, however, had been given that rights of property should be respected. When the city was surrendered to the army under General Butler a proclamation was issued, dated May 1, 1862, one clause of which was as follows: "All the *rights* of *property* of *whatever kind* will be held *inviolate*, *subject* only to the laws of the United States." This, as was remarked in the case of the Venice, only reiterated the rules established by the legislative and executive action of the national government in respect to the portions of the States in insurrection, occupied and controlled by the troops of the Union. That action, it was said, indicated the policy of the government to be not to regard districts occupied and controlled by national troops as in actual insurrection, or their inhabitants as subject, in most respects, to treatment as enemies.
>
> Substantial, complete, and permanent military occupation and control was held to draw after it the full measure of protection to persons and property consistent with a necessary subjection to military government. We do not assert that anything in General Butler's proclamation exempted property within the occupied district from *liability* to *confiscation* as enemies' property, if in truth it was such. All that is now said is, that after that proclamation private property in the district was not subject to military seizure as booty of war. But admitting as we do that private property *remained subject to confiscation*, it is undeniable that confiscation was possible only to the extent and in the manner provided by the acts of Congress. Those acts were passed on the 6th August, 1861, and on the 17th July, 1862. No others authorized the confiscation of private property, and they provided the manner in which *alone* confiscation could be made. They designated government agents for seizing enemies' property, and they directed the mode of procedure for its *condemnation in the courts*. The system devised was necessarily exclusive. No authority was given to a military commander, as such, to effect any confiscation. * * * It is therefore of little importance to inquire, what, under the general laws of war, are the rights of a conqueror, for during the recent civil war the Government of the United States asserted no gen-

eral rights in virtue of conquest to compel the payment of private debts to itself. On the contrary it was impliedly disclaimed except so far as the acts of 1861 and 1862 asserted it. These enactments declaring that private property belonging to certain classes of persons might be confiscated, in the manner particularly described, are themselves expressive of an intent that the rights of conquest should not be exercised against private property except in the cases mentioned and in the *manner* pointed out. * * * It follows then that the order of General Banks was one which he had no authority to make, and that his direction to the bank to pay to the quartermaster of the Army the debt (or deposit) due to the Planters' Bank was wholly invalid.

The Supreme Court having thus declared that the attempt of the commanding general to enforce by military order the confiscation acts of Congress against the property and effects of even actual enemies of the United States was without authority and invalid, and it further appearing that there has never been any judicial procedure for the condemnation of the funds seized, as directed and required by the confiscation acts of 1861 and 1862 so as to divest and defeat the private rights of the owner, it follows that the United States never acquired any valid interest or title to the money of Walworth turned over to the government under said order 202. The possession obtained by the government under the unauthorized act of its commanding officer conferred upon it no higher or stronger right to this fund, even conceding that Walworth was disloyal, than that acquired by military seizure under the captured and abandoned property acts. Under an invalid and unauthorized order of its commanding general the government simply got possession of the fund, and placed itself in position to enforce against it the confiscation acts of 1861 and 1862, provided the owner had subjected himself to the penalties of said acts by aiding and abetting the rebellion. But Walworth was actually loyal, and his money could not lawfully have been condemned and confiscated under said acts. There having been no legal or valid divestation of his title and interest in the money seized, Walworth, under the authority of Armstrong and Pargona cases (13 and 16 Wallace), if he could sue the government, would be entitled to recover this fund. Other depositors have recovered by suit in the Court of Claims, but Walworth is now precluded from resorting to such remedy by the statute of limitations. Should the government, under the facts and circumstances of this case, interpose such a defense or deny relief to a meritorious claim and claimant?

At the close of the war Mr. Walworth was an old man, completely broken up by the casualties and disasters of war. He was in feeble and infirm health; moved about with difficulty and with pain to himself. He lived in a remote section of the State, and for years after the close of the war mail facilities there were very deficient. Not able to leave home, and, as it appears, in ignorance of his rights and of the necessity for diligence in looking after and prosecuting them, the time for procuring relief in the courts passed. Under these circumstances your committee think that lapse of time should not be counted strictly against Walworth; and as the claim is one of real merit, and the correctness of the amount beyond all dispute, your committee recommend the passage of the bill.

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'TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 789.

# IN THE SENATE OF THE UNITED STATES.

JULY 6, 1882.—Ordered to be printed.

r. JACKSON, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 392.]

*he Committee on Claims, to whom was referred the bill (S. 392) for the relief of the heirs of Maurice Grivot, having examined the same, make the following report:*

That Marie Emma Nicholas and Anne Elodie Jaques are the heirs law of Maurice Grivot, who was a citizen of the State of Louisiana; at said Grivot was a depositor in the branch of the Louisiana State ank at New Orleans, and that on the 17th day of August, 1863, there ood to his credit in said bank the sum of $1,574.79, which was ken possession of by the military authorities of the United States, en in the occupation of the city of New Orleans, under the following rcumstances:

On the 17th of August, 1863, an order was issued by command of ajor-General Banks, then in command of the Department of the ulf, requiring the several banks and banking associations of New rleans to pay over, without delay, to the chief quartermaster of the rmy, or to such officer of his department as he might designate, all oney in their possession belonging to, or standing upon their books the credit of, any person registered as an enemy of the United States engaged in any manner in the military, naval, or civil service of the so-called Confederate States, or who should have been, or might hereter be, convicted of rendering any aid or comfort to the enemies of e United States." The order declared that those funds would "be *ld* and *accounted* for by the Quartermaster's Department, *subject* to ie *future* adjudication of the Government of the United States."

Under and in obedience to this order, the branch of the Louisiana ate Bank paid over to the acting quartermaster the balance standing on s books to the credit of Maurice Grivot, who seems to have been regisred as an enemy of the United States. It appears from the receipts id accounts of the quartermaster to whom this balance of $1,574.79 longing to Grivot was paid that the sum of $611.94 was received in onfederate funds and the sum of $962.85 in par or current funds. Why portion of the amount was paid and received in Confederate funds is ot explained. The United States authorities do not appear to have ade any use of the Confederate funds. The par funds ($962.85), with te funds received under said General Order No. 202 from other banks, nounting in the aggregate to $44,692.43, were taken up in August, 63, and expended by the quartermaster for the ordinary purposes of e Quartermaster's Department. The order of the commanding gen-

eral directed the fund "to be held and accounted for by the Quartermaster's Department, *subject* to the *future adjudication* of the Government of the United States." And the chief quartermaster, in his order designating Captain McClure, acting quartermaster, as the officer to receive said funds, directed him to "hold this money and account for it to the United States Treasury."

It further appears that subsequently, in proceedings under the act of July 17, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," in the case of the "United States *vs.* The right, title, interest, and estate of M. Grivot in and to household effects," the sum of $220.34 was paid into the Treasury of the United States by the clerk of the United States district court of Louisiana. This sum of $220.34 was the proceeds realized by the sale of said Grivot's household effects under said libel suit. No judicial proceedings were ever had to confiscate or condemn the funds of Grivot received from the bank. The present bill proposes to return to the heirs of said Grivot the sum of $1,795.13 (being the amounts received by the government from the bank and from the confiscated household effects), with interest at the rate of 6 per cent. per annum from August, 1863, until paid.

The proceedings to confiscate the household effects of Grivot are presumed to have been regularly conducted in pursuance of law, and operated to divest him and his heirs of all right, title, and interest in and to the property condemned and the proceeds realized from its sale. Your committee can see no ground or principle upon which the heirs can properly make any equitable claim to this part of the fund. Nor can they recognize the liability of the United States to return to the claimants in par funds the amount ($611.94) the bank turned over to the quartermaster in Confederate funds, which appear to have been worthless to the government.

The only remaining question raised by the facts and circumstances above detailed is whether there is any duty or obligation, legal or equitable, on the part of the government to return or pay over to the heirs of Grivot the amount of *par funds* belonging to him which were received from the bank.

At the close of the war Grivot sought redress against the bank in the State courts of Louisiana, but failed to recover, the court holding that the military order under which the money was paid over was a protection to the bank. He or his heirs, therefore, have only the government to look to for reimbursement, and whether such reimbursement should be made by the United States properly involves a consideration of the *validity* of General Order No. 202, under which the fund was turned over. The object and purpose of the order was not to supply military wants and necessities, but simply to impound and confiscate the moneys of persons registered as enemies of the United States. Had the commanding general of the department, in August, 1863, authority to issue such an order? This is not an open question. The Supreme Court of the United States in the case of Planters' Bank *vs.* Union Bank (16 Wallace, 494 to 497) had occasion to pass upon the validity of this very order, and it was there decided, in December, 1872, that General Banks had no authority to make said order, and that it was wholly invalid. The following extract from the opinion of the court will show the reasoning and principle on which the decision was rested. The court say:

> The validity of the order is, therefore, the first thing to be considered. It was made, as we have seen, on the 17th of August, 1863. When the city of New Orleans was in

quiet possession of the United States forces. It had been captured more than fifteen months before that time, and undisturbed possession was maintained ever after its capture. Hence the order was no attempt to seize property "*flagrante bello*," nor was it a seizure for immediate use of the Army. It was simply an attempt to confiscate private property, which, though it may be subjected to confiscation by legislative authority, is, according to the modern law of nations, exempt from capture as booty of war. Still, as the war had not ceased, though it was not flagrant in the district, and as General Banks was in command of the district, it must be conceded that he had power to do all that the laws of war permitted, except so far as he was restrained by the pledged faith of the government or by the effect of Congressional legislation. A pledge, however, had been given that rights of property should be respected. When the city was surrendered to the army under General Butler, a proclamation was issued dated May 1, 1862, one clause of which was as follows: "*All the rights of property of whatever kind will be held inviolate*, subject only to the laws of the United States." This, as was remarked in the case of the Venice (2 Wallace, 258), "only reiterated the rules established by the legislative and executive action of the National Government in respect to the portions of the States in insurrection occupied and controlled by the troops of the Union." That action, it was said, indicated the policy of the government to be, not to regard districts occupied and controlled by national troops as in actual insurrection, or their inhabitants as subject in most respects to treatment as enemies. Substantial, complete, and permanent military occupation and control was held to draw after it the full measure of protection to persons and property consistent with a necessary subjection to military government. We do not assert that anything in General Butler's proclamation exempted property within the occupied district from liability to *confiscation* as enemies' property, if in truth it was such. All that is now said is, that after that proclamation private property in the district was not subject to military seizure as booty of war. But admitting as we do that private property remained subject to confiscation, and also that the proclamation applied exclusively to inhabitants of the district, it is undeniable that confiscation was possible only to the extent and in the manner provided by the acts of Congress. These acts were passed on the 6th August, 1861, and on the 17th July, 1862. No others authorized the confiscation of private property, and they prescribed the manner in which alone confiscation could be made. They designated government agents for seizing enemies' property, and they directed the mode of procedure for its condemnation in the courts. The system devised was necessarily exclusive. No authority was given to a military commandant, as such, to effect any confiscation * * * It is therefore of little importance to inquire what, under the general laws of war, are the rights of a conqueror, for during the recent civil war the Government of the United States asserted no general right in virtue of conquest to compel the payment of private debts to itself. On the contrary it was impliedly disclaimed, except so far as the acts of 1861 and 1862 asserted it. These enactments declaring that private property belonging to certain classes of persons might be confiscated, in the manner particularly described, are themselves expressive of an intent that the rights of conquest should not be exercised against private property except in the cases mentioned and in *the manner pointed out.* * * * It follows, then, that the order of General Banks was one which he had no authority to make, and that his direction to the bank to pay to the quartermaster of the Army the debt due the Planters' Bank was wholly invalid.

The Supreme Court having thus decided that the attempt of the commanding general of the department to enforce by military order the confiscation acts of Congress against the property and effects of rebellious citizens of the United States was without authority and invalid, and it further appearing that there has never been any judical procedure for the condemnation of the funds thus seized as directed and required by the confiscation acts of 1861 and 1862, so as to divest and defeat the private rights and interests of the owner, it follows that the United States acquired no valid title under that seizure to the money of Grivot, who before his death received full and complete amnesty from the government, which removed the only ground on which confiscation or an actual divestiture of his interests could be predicated. The possession obtained by the government under the unauthorized order of its commanding officer conferred upon it no *higher* or *stronger right* to this fund than that acquired by a seizure under the captured and abandoned property acts. The government simply got possession of the fund, with the right to have it condemned and confiscated in the

*exclusive* mode and manner directed and prescribed by the confiscation acts of 1861 and 1862, but before exercising this right, which was necessary to a valid divestiture of the owner's title and to perfect its own, the government confers upon the owner complete amnesty for all the past offenses which entitled it to confiscate the fund. This grant of amnesty was a voluntary surrender and abandonment by the United States of its right to complete and perfect that judicial condemnation of the fund which was necessary to defeat the owner's interest. Having been pardoned before any legal and valid divestiture of his rights was had, the acts of Congress and the decisions of the Supreme Court entitle the owner or his legal representatives to the full benefit of a restoration of his property as completely as though no seizure had ever been made or military confiscation attempted.

Under the authority of Armstrong *vs.* United States (13 Wallace, 154) and Pargoud *vs.* United States (16 Wallace, 156) the claimants in the present case, if they could sue the government, would be entitled to recover this fund. Will Congress deny to them, simply because it has the power to withhold, what the courts of the United States would allow as a valid right? To do so would be the exercise of a punitive power, destructive of the rights which the clemency of the executive department have lawfully restored. It would present a singular anomaly for Congress to deny rights recognized by the judicial and executive departments of the government.

Your committee therefore consider that the money belonging to Grivot to the extent of $962.85 received, as aforesaid by the government in par funds, should be restored to his heirs at law, but without interest, and they accordingly recommeud the passage of the bill with the following amendments:

In lines 5, 6, 7, and 8 of bill, strike out the words "one thousand seven hundred and ninety-five dollars and thirteen cents, with interest at the rate of six per centum per annum from August seventeenth, eighteen hundred and sixty-three, until paid," and insert in lieu thereof the following: "nine hundred and sixty-two dollars and eighty-five cents," and as thus amended the committee recommend the passage of the bill.

C

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 790.

# IN THE SENATE OF THE UNITED STATES.

JULY 6, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 282.]

*The Committee on Claims, to whom was referred the bill (S. 282) for the relief of James Bridger, submit the following report thereon:*

This bill was favorably reported from the Committee on Claims of the House of Representatives, June 12, 1880. We adopt that report, which is as follows, viz:

*The Committee on Claims, to whom were referred the papers relating to the claim of James Bridger for the payment of rent for the use of the premises known as Fort Bridger, and for the value of his improvements thereat, having had the same under considerationn, submit the following report:*

The evidence in this case clearly establishes the following facts: About the year 843 claimant located upon a tract of land situated in Green River County, now Utah Territory, and commenced the erection of a trading house and other buildings and mprovements. From the date of said location said claimant resided at said post, and ngaged in trade with the surrounding tribes of Indians, until in the fall of 1857, at vhich last-mentioned date the improvements constructed by said claimant at said trading post consisted of thirteen spacious and substantial log houses constructed out of ewed timbers; the roofs and floors were of sawed boards, which were sawed out with whip-saws; the roofs were also covered with sod to render them fire-proof. The ouses were so located as to form a hollow square in the center of an area of about ,000 square feet, all of which was surrounded with a strong, solid stone wall, laid in ement, about 18 feet high and 5 feet thick, with bastions at each corner. Outside of aid wall was a strong corral for stock, about 200 by 300 feet square, inclosed in like anner by a stone wall laid in cement, about 10 feet high and 2½ or 3 feet thick, ogether with six other outhouses. The testimony shows that these improvements ere erected by said claimant, and were used by him as his residence and as a trading ost, and were called and known as "Fort Bridger." In the year 1857 the Army of tah, commanded by General Albert S. Johnston, took possession of said premises on behalf of the United States, under a written contract of lease executed by claimant, f the one part, and Capt. John H. Dickerson, assistant quartermaster, United States rmy, on behalf of the United States, of the other part.

The material portions of said written contract, so far as the claim of said Bridger is ncerned, are as follows:

Said claimant leased to the United States for the term of ten years from the 18th ay of November, 1857, a tract of land consisting of 3,898 acres and 2 roods, situated Green River County, Utah Territory, and particularly described in a plot attached said written contract and made a part thereof, upon which tract of land is situated Fort Bridger." By the terms of said contract the United States agreed to pay to aimant an annual rent for the use of said premises of $600, the rent to commence as on as claimant established his title to said tract of land to the satisfaction of the uartermaster-General of the United States, or whenever the Attorney-General of the nited States should pronounce the title good. It was further agreed by the contracting parties that the United States Government, through its agent, should have the ivilege at any time within the period of said lease of purchasing said tract of land

by paying claimant the sum of $10,000. It is also provided by the terms of said contract that said lease might be terminated by the United States upon three months' notice by the Quartermaster-General of the United States Army, or by his agent, to claimant.

The United States have continued to occupy said premises from the day of the date of said lease to the present time. The claimant has never established his title to the premises, but on July 14, 1859, less than two years after the date of said contract, the President declared it a military reservation, and that the General Land Office had never recognized any private claim in the vicinity of Fort Bridger; and, further, should any claims have existed in that locality, under the treaty of 1848 with Mexico, that no law existed for their adjustment. The testimony further shows that the cost of said improvements to said claimant was about the sum of $20,000.

Claimant, believing himself entitled to be paid for the use and occupation of Fort Bridger and the buildings connected therewith, and for the value of said improvements, made application to the War Department therefor, and was informed by a communication from the Secretary of War, dated February 21, 1878, that his failure to establish his title to the property in question previous to its being declared a military reservation precluded the Secretary of War from recognizing his claim to ownership or rent. The foregoing are the material facts bearing upon the claim for which your committee are asked to recommend an allowance.

It may be, and really appears to be, a hardship upon claimant that he should be entirely deprived of the improvements erected by him, and of compensation for their use by the United States for a period of more than twenty years; yet the terms of said written contract clearly preclude him from a recovery according to the forms of law. The evidence upon which this report is founded consists of numerous affidavits, and communications from the War Department, together with a certified copy of the written contract.

Your committee believe the ends of justice will be promoted by permitting the claimant to assert his claim in a court of justice, where witnesses can be subjected to cross-examination and the proper tests applied for the ascertainment of a just and equitable determination.

Your committee therefore recommend that the accompanying bill be passed permitting claimant to sue in the Court of Claims for the amount he believes himself entitled to, freed from the bar of the statute of limitations, and that his case be heard by said court and determined as equity and justice shall appear.

C

WASHINGTON CITY, D. C., *April* —, 1882.

*the honorable members of the Committee on the District of Columbia of the United States Senate:*

Your petitioners, officers, clerks, and employés of the Metropolitan police force of e District of Columbia during the fiscal year ending June 30, 1867, respectfully ask at you will recommend to the Committee on Appropriations the insertion of the folving clause in the sundry civil bill:

Section —. To enable the Secretary of the Treasury to pay to the officers, clerks, d employés of the Metropolitan police force, or their legal representatives, the nounts due them under the joint resolution of Congress of February 28, 1867, as ttled by the Supreme Court in the "twenty-per-cent.-cases" (XIII and XX Wallace ports), $46,846.86.

Your petitioners respectfully submit, in support of this appeal, copy of Senate bill . 319, Forty-fifth Congress, second session, and House report No. 30 of same Coness, which adopted the Senate report and recommended the passage of the Senate ll without amendment. It failed to be reached on the calendar.

Your petitioners desire to call attention to an error in the Senate report, which states at when the decisions reported in the XIII Wallace Reports were made it was too te to sue in the Court of Claims. It was not too late! The Comptroller, by implition, recognized the right of your petitioners to the additional pay under these desions, but decided that he could not pay them, as the law had been repealed by the t of July 12, 1870.

A test case was made on this decision and carried to the Supreme Court, and is reorted in XX Wallace, pages 186 and 187.

By this decision it was settled that the law *had not been repealed.* When this decision as made, your petitioners again applied to the Comptroller for the amounts due them, id were again denied; *this time* on the ground that the appropriation had been coved into the Treasury, and no funds were available. Meanwhile the statute of limitions had run against them in the Court of Claims.

Your petitioners claim a fixed and vested right to this money as a part of their pay r services faithfully performed. The law being still in existence, nothing is required it the appropriation. Your petitioners call attention to the fact that they are largely nore than three-fourths) composed of ex-soldiers and sailors, and have received no ensions, as they could not have been appointed on the force had they been within ie pension laws.

Respectfully submitted by counsel.

C. E. CREECY,
*Attorney for Petitioners.*

JOHN POOL,
*Of Counsel.*

Counsel takes the liberty of suggesting that there were from two to three hundred ersons employed in different capacities on the force during the fiscal year ending June 0, 1867. Between seventy and eighty have since died, and their widows and orhans will receive their portions. A large number have left the force on account of isability, &c., and many of them are in distressing pecuniary circumstances. The nounts claimed by each one range from seventeen to four hundred dollars. Exovernor Thomas H. Ford, of Ohio, original counsel for the force, advised them not to ie, but wait the court's decision in Manning's case, as he had been assured that the reasury Department would pay them if it was decided in Manning's favor—Mannig's case being exactly parallel to theirs, in his judgment. The only objection to ie payment made by the Treasury was the repeal of the joint resolution. Govnor Ford again advised the force not to present their claims to the court. The incidental costs of printing, notaries', clerk's fees, &c., would have swallowed the amounts ne many of the claimants. Governor Ford repeated his assurance that when the last bjection to the payment, namely, the plea that the joint resolution had been reealed, had been swept away, they would certainly be paid by the Treasury without rther delay. The result was, though all the legal questions and principles involved ad been settled in their favor by seven years' litigation, their application was again enied for want of funds; and even *those* whose claims were large enough to justify a uit, were barred by the statute of limitations.

"Many persons embraced in the above resolution, and among the number the Metropolitan police force of the city of Washington, made application for their additional compensation and were refused, under the ruling of the First Comptroller, upon the ground that they were not among the persons described in the resolution entitled to the additional 20 per centum.

The parties interested, with the exception of the Metropolitan police force, brought suit for their respective claims before the Court of Claims, and obtained judgments against the United States. The counsel for the government appealed to the Supreme Court of the United States, which tribunal has confirmed the decision of the Court of Claims.

"The counsel for the Metropolitan police force advised them not to bring suit, but to await the decision in the cases already taken up, as they were test cases and would decide the case of the force. When the cases referred to had been decided it was too late for them to sue in the Court of Claims, and the Comptroller refused to entertain their claim again on the ground that the resolution of February 28, 1867, had been repealed by the act of July 12, 1870.

"The case of Charles N. Manning, guard or watchman of the jail, was decided in his favor by the Court of Claims, and that decision was confirmed by the Supreme Court of the United States. The Supreme Court decided that as the guards and watchmen of the jail are appointed by the warden, who is required to report to the Secretary of the Interior, and as the Secretary of the Interior fixes the salaries of the guards and watchmen, they belong to a bureau or division of the Interior Department.

"By the act of August 6, 1861, a board of police commissioners are appointed in the same manner that the warden of the jail is, and this board appoint the police force precisely as the warden appointed the guards and watchmen of the jail.

"The board of commissioners are, by the same act, required to report to the Secretary of the Interior annually the condition of the police force.

"Annual estimates of appropriations are required by the Secretary of the Interior for the force, and returns are made to him. All requisitions for money for printing and supervising legal opinions are made through him. Charges made against members of the board of police are investigated by him; applications for the appointment to the office are filed with him, and the nominations are made by him, and all communications to Congress and the Executive are made through him, and payment to the board and force of salaries is made through him.

"Attorney-General Bates, in an opinion addressed to the Hon. Caleb B. Smith, Secretary of the Interior, decided that it was the duty of the Secretary of the Interior to cause the oath of allegiance to be administered to the board of police and that they are connected with the Department of the Interior.

"All the decisions of the Attorney-General relative to the board of commissioners have been addressed to the Secretary of the Interior.

"The Metropolitan force has been published in the Blue-Book as connected with the Department of the Interior until it was transferred to the Department of Justice.

"It is evident that the Metropolitan police force of Washington was a bureau or division of the Department of the Interior at the time that the Comptroller refused them the additional compensation allowed by the joint resolution of February 28, 1867. In view of that fact, the committee recommend that said force be allowed to sue the United States in the Court of Claims for the 20 per centum claimed by them under the resolution aforesaid, and recommend the passage of the bill (S. 304) already reported.

"The 20-per-cent. cases (13 Wallace, 568) are the authorities referred to in support of the foregoing report, and they seem to sustain the claim fully."

In the case of Lippett, reported in 100 U. S. Reports, 663, the Supreme Court decided that while a claim against the United States is pending and being prosecuted before one of the executive departments it cannot become barred by the statute limiting the jurisdiction of the Court of Claims to such claims as have accrued within six years before the filing of them in that court. This decision of the Supreme Court settles the last point raised against the present claim of the Metropolitan police force. The amount reported by the First Comptroller and by the Commissioners of the District of Columbia to be due the force under the joint resolution of February 28, 1867, is $46,846.86, which embraces and is the aggregate of the amounts due to about two hundred persons. The amount is due them under existing law, and no further legislation is necessary for the relief of the claimants, except to renew the appropriation to pay them. That is necessary, because the appropriation made by the joint resolution of February 28, 1867, has been covered into the Treasury and is not now available.

Your committee therefore report a recommendation to the Committee on Appropriations that the following clause be inserted in the proper appropriation bill, to wit:

To enable the Secretary of the Treasury to pay to the officers, clerks, and employés of the Metropolitan police force of the District of Columbia, or their legal representatives, the amounts due them under the joint resolution of Congress of February 28, 1867, $46,846.86.

WASHINGTON CITY, D. C., *April* —, 1882.

*To the honorable members of the Committee on the District of Columbia of the United States Senate:*

Your petitioners, officers, clerks, and employés of the Metropolitan police force of the District of Columbia during the fiscal year ending June 30, 1867, respectfully ask that you will recommend to the Committee on Appropriations the insertion of the following clause in the sundry civil bill:

Section —. To enable the Secretary of the Treasury to pay to the officers, clerks, and employés of the Metropolitan police force, or their legal representatives, the amounts due them under the joint resolution of Congress of February 28, 1867, as settled by the Supreme Court in the "twenty-per-cent.-cases" (XIII and XX Wallace Reports), $46,846.86.

Your petitioners respectfully submit, in support of this appeal, copy of Senate bill No. 319, Forty-fifth Congress, second session, and House report No. 30 of same Congress, which adopted the Senate report and recommended the passage of the Senate bill without amendment. It failed to be reached on the calendar.

Your petitioners desire to call attention to an error in the Senate report, which states that when the decisions reported in the XIII Wallace Reports were made it was too late to sue in the Court of Claims. It was not too late! The Comptroller, by implication, recognized the right of your petitioners to the additional pay under these decisions, but decided that he could not pay them, as the law had been repealed by the act of July 12, 1870.

A test case was made on this decision and carried to the Supreme Court, and is reported in XX Wallace, pages 186 and 187.

By this decision it was settled that the law *had not been repealed*. When this decision was made, your petitioners again applied to the Comptroller for the amounts due them, and were again denied; *this time* on the ground that the appropriation had been covered into the Treasury, and no funds were available. Meanwhile the statute of limitations had run against them in the Court of Claims.

Your petitioners claim a fixed and vested right to this money as a part of their pay for services faithfully performed. The law being still in existence, nothing is required but the appropriation. Your petitioners call attention to the fact that they are largely (more than three-fourths) composed of ex-soldiers and sailors, and have received no pensions, as they could not have been appointed on the force had they been within the pension laws.

Respectfully submitted by counsel.

C. E. CREECY,
*Attorney for Petitioners.*

JOHN POOL,
*Of Counsel.*

Counsel takes the liberty of suggesting that there were from two to three hundred persons employed in different capacities on the force during the fiscal year ending June 30, 1867. Between seventy and eighty have since died, and their widows and orphans will receive their portions. A large number have left the force on account of disability, &c., and many of them are in distressing pecuniary circumstances. The amounts claimed by each one range from seventeen to four hundred dollars. Ex-Governor Thomas H. Ford, of Ohio, original counsel for the force, advised them not to sue, but wait the court's decision in Manning's case, as he had been assured that the Treasury Department would pay them if it was decided in Manning's favor—Manning's case being exactly parallel to theirs, in his judgment. The only objection to the payment made by the Treasury was the repeal of the joint resolution. Governor Ford again advised the force not to present their claims to the court. The incidental costs of printing, notaries', clerk's fees, &c., would have swallowed the amounts due many of the claimants. Governor Ford repeated his assurance that when the last objection to the payment, namely, the plea that the joint resolution had been repealed, had been swept away, they would certainly be paid by the Treasury without further delay. The result was, though all the legal questions and principles involved had been settled in their favor by seven years' litigation, their application was again denied for want of funds; and even *those* whose claims were large enough to justify a suit, were barred by the statute of limitations.

I CONGRESS, } SENATE. { REPORT
st Session. } { No. 792.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1206]

*Committee on Pensions, to whom was referred the bill (H. R. 1206) anting a pension to Mrs. Kate L. Usher, widow of Capt. James D. sher, of the United States Revenue Marine Service, having very carelly considered the same, report as follows:*

iat Captain Usher was commissioned a third lieutenant in the Rev- Marine Service June 15, 1844, and was gradually promoted, until 364 he was appointed captain in the Revenue Marine Service. It ears from the record furnished by the Treasury Department that greater part of Captain Usher's service was in the South.

appears to have been a rule in the Revenue Marine Service that term of service for an officer in the South was limited to two years, ss the exigencies demanded otherwise. On the 28th day of Janu- 1869, Captain Usher was ordered to duty at Wilmington, N. C., re he contracted malaria in one of its most dangerous forms. At end of his two years' service, instead of being sent to the North, as customary in the Revenue Marine Service, he was continued at mington until April 21, 1871, when he was ordered to the command he Stevens, at New Berne, N. C., where he died on July 30, 1871, of gestion of the brain.

iere is on file in the medical evidence in this case the following affi- t of Dr. H. G. Bates:

is is to certify that early in May, 1871, Capt. James D. Usher, late a captain in Inited States Marine Service, called on me for professional advice and treatment. examination, I found him to be suffering from remittent fever and malarial de-, accompanied by great and excessive functional derangement of the liver, pro- l, in my opinion, by long and protracted exposure to malarial influences. I pre- ed for him repeatedly from this time till on or about June 23, 1871, when I made re particular and extended exam natiou of Captain Usher, and, as marine hos- surgeon at this port (at that time), I recommended an immediate change of ate as absolutely necessary to restore Captain Usher to health, although I consid- it the "forlorn hope." I heard nothing of this recommendation till July 25, 1871, , by an order from the department, a board of survey was held by myself and J. lughes, M. D., the result of which was a recommendation that Captain Usher at once a change of climate as absolutely necessary to preserve life (if not al- too late). On the 27th of July, 1871, symptoms of congestion of the brain were oped, of which disease the captain died July 30, 1871—a not unusual termination patic disease when the system has become so thoroughly charged with malarial n. We had many reasons to hope and believe that a change of climate six weeks ous to Captain Usher's death would have resulted in a slow recovery to health, ugh when (as it was in his case) the system becomes so charged with malarial

poison a long time has to elapse before it can be eradicated from the system so thoroughly that the liver will again put on healthy action and perform its functions as in health.

Dr. Hughes makes an affidavit substantially the same as above.

Dr. E. A. Anderson makes oath as follows:

This is to certify that James Usher, late captain of the Revenue Marine Service, was under my treatment for jaundice caused by repeated malarial attacks during the years 1869, 1870, and 1871. Said malarial fever was contracted in the service of the government while on duty in the waters of the Cape Fear River, in North Carolina. After his removal to New Berne, N. C., there an attack of jaundice resulted in his death in July, 1871.

Ethelbert Hubbs, postmaster at New Berne, makes an affidavit substantiating the facts as alleged regarding applications for leave of absence, &c. In reply to a letter from Mrs. Usher, the chief of the Revenue Marine, Treasury Department, says:

In reply I have respectfully to inform you that the regulations of the Revenue Marine Service, in force at the time of your husband's death, prescribed as the usual tour of duty of an officer on any station two years only; and it was the custom of the department to conform strictly to that regulation. It seems that in Captain Usher's case he had already served two years, when he was ordered to duty, April 21, 1871, to another southern station. The record does not state what exigency required him to be retained at the South. * * * There had been a change in the head of the Revenue Marine just prior to that date, and it seems probable to me that Captain Usher's assignment was intended to be temporary only.

Now, in the foregoing affidavits it appears evident that had a change to another climate been made at the end of the two years, or had he been granted the leave of absence applied for under medical direction, he would probably have recovered, but that the extra six months' service, from January, 1871, to July, 1871, proved fatal in Captain Usher's case.

An act granting a pension to Mary Woodward, of New Haven, Conn., widow of the late Lieut. Kirby S. Woodward, of the Revenue Marine Service, passed Congress and was approved March 3, 1853. In this case the deceased came to his death by drowning, and his service was in no way connected with the Navy so as to bring him under the statutes, and was not so meritorious as that of Mrs. Usher, whose husband became a victim to delay either in changing his station or allowing him a leave of absence. The statutes provide that in certain cases Revenue Marine officers are pensionable at the same rate as Navy officers (see Revised Statutes, sections 1492 and 4741), and in granting this pension to Mrs. Usher it should be at the rate provided in the Revenue Marine cases coming under the statutes.

The Secretary of the Treasury in his report strongly recommends the general pensioning of the Revenue Marine Service at Navy rate. (See Report of Secretary of Treasury, 1872, p. 15; Report of Secretary of Treasury, 1873, p. 24; Report of Secretary of the Treasury, 1876, p. 32.)

The case of Captain Usher is of a very exceptional character. The circumstances strongly recommend that Mrs. Usher is equitably entitled to a pension. She is left extremely poor, in bad health, with the support of a child on her hands, and is entirely dependent upon her individual labor for support.

Your committee therefore recommend the passage of the bill H. R. 1206.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 793.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1422.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1422) granting a pension to Mary Wade, mother of Jennie Wade, who was killed at Gettysburg, Pa., while in the act of baking bread for the Union soldiers, having carefully examined the same, submit the following report:*

That it appears from the evidence filed in this case that Mary Wade was the mother of the said Jennie Wade, a resident of Gettysburg, on Friday, the 3d day of July, 1863, the day of the battle at that place; that long prior to this time, to wit, ten years, the husband of said Mary Wade was confined as a lunatic in Adams County poor-house, where he continued up to the time of his death; that the family of the said Mary Wade consisted of three boys, a married daughter, and the said Jennie Wade; that the said mother received nothing towards the support of the family from the boys or the married daughter, but was dependent upon the help and assistance of the said Jennie Wade, to a very great extent.

The mother, in an affidavit under date April 4, 1878, makes oath—

That seven days previous to the death of the said Jennie Wade, she, the said Mary A. Wade, had gone to nurse, take care of, and stay with her eldest daughter, George Anna, intermarried with John Lewis McClellan, for her said daughter George Anna was confined in childbirth, and her said husband, John Lewis, was away in the nine months' service; that she remained there till after the battle, but on the 1st day of July, 1863 (being the first day of the battle), becoming anxious and concerned about the safety of her said daughter Jennie, sent home for her, and had her come out to where she was staying; that from that time, viz, the 1st day of July, A. D. 1863, to the 3d day of July, A. D. 1863, she, the said Mary A. Wade, and her two daughters, the said George Anna and the said Jennie, staid in the same house, and that said house was situate near the extreme south end of Baltimore street, in the said borough of Gettysburg, on the east side of the street, near the top of Cemetery Hill, and was just within the Union lines, and was occupied during the battle by Union sharpshooters; that on Thursday, the 2d day of July, A. D. 1863, all the bread in the house had been *given away to* and eaten by Union soldiers; that on Friday, the 3d day of July, 1863, the said Jennie Wade was making up a large batch of bread for the Union soldiers, and the family; that she had just finished making the bread, and was standing in the kitchen with her back to the door opening from the kitchen into the yard on the south side of the house; that she had just taken out some more flour and turning to her mother, the said Mary Wade, had said, "Mother, I am going to make some biscuit now; won't they be nice for the boys?"—meaning by the term "boys" the Union soldiers—when she was shot. The ball passed through the outside kitchen door and a door leading from the kitchen to the dining-room, which door was standing open, and entered the small of the back just below the left shoulder blade. She expired instantly.

That upon hearing the shot the said Mary A. Wade turned and saw her daughter, the said Jennie, sinking to the floor. On running to her and lifting her up, she found that her daughter was already dead. That finding her dead, she, the said Mary A. Wade, with the assistance of some Union soldiers, put a quilt over the dead body, and put it on a lounge in the room, but afterward removed it to the cellar. That her said daughter Jennie was killed about eight o'clock on the morning of the 3d day of July, 1863, and was buried in a hole in the garden back of the house, about three o'clock in the afternoon of the 4th day of July, 1863, but was afterwards removed to the cemetery.

She further states that at this time, in the month of July, 1863, her husband, John Wade, was living, but that for ten years previous to this time, and at this time, and ever after till the time of his death, he, the said John Wade, was, and continued so to be, an inmate of the Adams County poor-house, being confined there as a lunatic; that at this time, and for many years previous the support of her family, and the partial support of the said Mary A. Wade's mother, depended upon the labor of the said Mary A. Wade and her daughter Jennie; * * * that she and her daughter, the said Jennie, supported the family by taking in sewing; that the said Jennie was a stout, healthy girl of twenty years of age, and was at the time of her death, and had for some years previous thereto, contributed materially to the support of the family; that the said Jennie was very faithful, steady, and expert with the needle, and was of great aid to the mother, the said Mary A. Wade, and in her death, the said Mary A. Wade lost her main support; that since the death of her said daughter Jennie she has been thrown upon her own labor for support; that she is now fifty-six years of age, and has no family or relations to support or maintain her; that she is dependent for her living upon the labor of her own hands and the charity of her friends; and that in addition there has of late years been thrown upon her hands the support of her now aged mother.

The said Mary A. Wade in a subsequent affidavit says:

She is poor, and owns no property whatever, real or personal, except a little furniture, not exceeding in value $40. She further states under oath that her daughter, who was killed as above stated, was a tailoress by trade, and with her assistance your affiant was barely able to make a living.

In a later affidavit the said Mary A. Wade swears as follows:

* * * She says further that the making of the bread was begun at the request of the soldiers there, who at that time were unable to go out of the house for fear of being shot by rebel sharpshooters who were not over 300 or 400 yards away. * * * That she had not before furnished any during that day, and had not received any pay or demanded any within her hearing or to her knowledge for anything done by her for Union soldiers. * * * We gave them nearly all we had to eat without asking or thinking of reward.

Mrs. Catharine Bushman makes affidavit substantially as follows: That she has known Mary A. Wade and her daughter, the former for forty years; that Jennie was a tailoress, and supported the family by working at her trade. That for about thirty years Mary A. Wade has been generally broken down; and for several years prior to Jennie's death Mrs. Wade could not have supported herself and her children without Jennie's assistance.

A. W. Fleming swears:

I know Mrs. Mary A. Wade, and knew her daughter Jennie, who was killed during the battle of Gettysburg by a bullet. I saw where the bullet came out. It came out on the left side in front, about the heart or just below it. She was buried just as she fell. I saw the dough on her hands, and flour and blood on her clothes. I took her body up from the garden where she was buried by the soldiers, and I buried her in the cemetery in this place. I knew her before she was killed, and identified the body as that of Jennie, Mrs. Mary Wade's daughter.

Julia Ann Fleming, in an affidavit, corroborates the general facts in the case.

Emanuel P. Bushman, Catharine A. Bushman, Annie R. Feistel, John M. Reiding, and Samuel Bushman, who were neighbors, living on the same street with Mrs. Mary A. Wade at the time of her daughter's death, make oath as to the general facts in the case.

Edward Meuchly and Peter Warren make oath as to the facts alleged, and that Mrs. Mary A. Wade is in destitute circumstances.

H. Skelly and W. T. King make oath "that they have been resi-
of Gettysburg, respectively, forty-five and thirty-seven years."
swear that during that time they have been merchant tailors;
both Mary A. Wade and her daughter Jennie worked for them at
ing; that they don't believe, from their acquaintance with Mrs.
and their knowledge of the amount of tailoring done by her, that
uld have supported herself and family without the assistance of
e.

evidence in this case proving the facts to have been as alleged
questionably conclusive. The House of Representatives have, at
esent session, passed the bill giving Mrs. Mary A. Wade a pen-
f $8 per month from and after the passage of the act. And your
ittee concur in the belief that Mrs. Wade should receive this pen-
and accordingly report the bill (H. R. 1422) back, with a recom-
ation that it pass.

'TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 794.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3258.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3258) granting a pension to Mrs. Elizabeth A. Hendrickson, examined the same, and report:*

That it does not appear that the cause of death of Colonel Hendrickson resulted from disease or injury which arose in service in line of duty. The claim of the widow was rejected at the Pension Office, as stated in the record, "for the reason that the death of Colonel Hendrickson, October 24, 1878, at the age of seventy-eight years, had no connection with service in the line of duty." Your committee therefore recommend that said bill be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT 794, Part 2.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill H. R. 3258.]

The minority of the Committee on Pensions, to whom was referred the bill (H. R. 3258) granting a pension to Mrs. Elizabeth A. Hendrickson, have examined the same, and submit their views in favor of the passage of the House bill, adopting the report of the Committee on Invalid Pensions of the House of Representatives, correctly stating the facts in the case, as follows:

Mr. STEELE, from the Committee on Pensions, submitted the following report, to accompany bill H. R. 3258:

*In the matter of the bill (H. R. 3258) granting a pension to Mrs. Elizabeth A. Hendrickson, your committee, to whom said bill was referred, have investigated and found as follows:*

The petitioner states that she is the widow of the late Col. Thomas Hendrickson, of the United States Army; that her husband died in Saint Louis October 24, 1878, leaving her so little that she has been obliged to run in debt in order to live, her only son being unable to support her; and that her prayer for a pension is based on the consideration of the long and faithful service of her husband.

This claim was rejected, according to records of the Pension Office (file No. 19955), "for the reason that the death of Major Hendrickson, October 24, 1878, at the age of 78 years, had no connection with service in the line of duty."

The official military history of Thomas Hendrickson, which accompanies the bill, is as follows: He first enlisted December 13, 1819, in the Fourth Battalion of Artillery, and was discharged July 18, 1821, for disability. He enlisted again July 20, 1823, and was assigned to Company F, Third Infantry, as sergeant; made first sergeant May, 1824, sergeant-major January 22, 1827, and discharged as such July 20, 1828, by expiration of service. He re-enlisted July 28, 1828; was made sergeant-major of regiment June 14, 1829; transferred to Company G, Sixth Infantry, as sergeant, April 15, 1831; appointed ordnance sergeant April 25, 1833; discharged as such and re-enlisted June 10, 1833; discharged June 10, 1836, by expiration of service. Appointed second lieutenant, Sixth Infantry, July 31, 1838; promoted first lieutenant December 3, 1840; promoted captain January 27, 1853; promoted major, Third Infantry, June 27, 1862. He was brevetted captain August 20, 1847, for gallant and meritorious conduct at the battles of Cherubusco and Contreras, Mexico, in which he was severely wounded; brevetted lieutenant-colonel July 1, 1862, for gallant and meritorious conduct at the battle of Malvern Hill, Va., and brevetted colonel March 13, 1865, for gallant and meritorious services during the war. He served in the quartermaster's department at Baltimore up to May 7, 1869, with which his active service closed.

Accompanying the petition is a letter from Maj. Gen. W. S. Hancock, who served in the same company with him, and relieved him from command when he was wounded in the Mexican war. General Hancock says that Hendrickson also served under General Jackson at Pensacola, and that his entire service covers 60 years. Also, that his horse was shot from under him at Gaines's Mills, Va., and that he was subsequently retired by an examining board "on account of incapability, the result of long and faithful service, and of wounds and injuries received in the line of duty." General Hancock further says that he understands the petitioner to be in straitened circumstances, and that her case is one of the most meritorious known to him.

In view of all the circumstances above set forth, your committee present a favorable report on the bill.

H CONGRESS, } SENATE. { REPORT
st Session. } { No. 795.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4966.]

*Committee on Pensions, to whom was referred the bill (H. R. 4966) ranting a pension to Thomas McManus, having examined the same, ake the following report:*

hat Thomas McManus enlisted February 24, 1864, as a private in npany A, Third Pennsylvania Artillery, One hundred and fifty-sec- Pennsylvania Volunteers, and was discharged July 11, 1865. On 31st January, 1879, he filed his application for pension, alleging as basis of his claim that at Fredericksburg, Va., "on March 8, 1865, he captured by the rebels, and was knocked down by a musket in ir hands, and otherwise abused, and left lying for dead on the streets Fredericksburg, and from the results of these injuries he has never n able to do any heavy work, and also has his arms partially para- ed from the effects of the blows he received at that time, and also ured internally, and that he was never treated in any hospital." In ubsequent affidavit, filed 23d February, 1880, he states that, after ng knocked down by rebel soldiers and left for dead, he was cared by negroes, and by their aid made his escape, and returned to his mand, and that he has had no medical treatment except that of Dr. . In another affidavit, made June 19, 1880, the claimant states had no medical attendance, after my return home, except taking licines myself." In a subsequent affidavit, made October 16, 1880, mant states:

ere were other soldiers and sailors assisting me in getting the tobacco on the , and when we were done our duty permission was given us to go into the town e it, and we scattered and went in different directions. I was on a cross street the one going from the river toward the hill, in the back of the town, when I struck. I do not know who it was that was with me when I was hit. I was nd the rest something like ten or fifteen feet when I was knocked down; do not w what became of my comrades. When I was hit I became insensible, and lay ead. Don't know how long I lay there. When I came to I was in a house nging to negroes, and remained there until the 17th March, 1865, when I escaped etting a skiff and crossing the river. * * * Rebels called on me every day to me, but did not take me, so when they told me I was to go next day, I made scape. * * * I cannot furnish medical evidence of my condition on my return, use I was never treated by a physician.

; appears from the evidence that in March, 1865, the claimant was letached service with what was known as Graham's Naval Brigade, ch, in connection with other troops, early in March, 1865, made a on Fredericksburg, then garrisoned by a small force of Confed-

erates. The troops landed and occupied the place without any resistance being offered. They captured a considerable quantity of tobacco, found there in warehouses, and carried the same aboard the gunboats. After disposing of the tobacco and completing the purpose of the raid, many of the soldiers left their command, whether with or without the permission of their officers, and scattered over the town sight-seeing, pillaging on private account, and drinking. Barnard Bush, a comrade of claimant, who participated in the raid, states that no permission to go up into the town was given; none was asked.

The soldiers went through the shops and stores helping themselves to what they fancied. Affiant well remembers going into a store and taking a cigar-box full of change, copper and silver coin; but as he was going towards the boat with the box, somebody suddenly pounced upon him, knocked him down, and carried off the box. Saw other men taking goods from the stores.

Jacob H. Covert, a comrade of claimant, states that when he first saw McManus after his return to his company, about seven weeks after the raid, the claimant often related how he happened to be left at Fredericksburg. He said:

That after having helped to load some tobacco, he went up into the town and into a store. In the store he helped himself to some of the goods. Affiant well remembers his telling that he had taken a suit of clothes and a pair of shoes, and perhaps other articles, and was about to leave the store with his booty, when three rebel soldiers came in and caught him at it. They said something to him, when he "sassed" them, and the three rebels then pitched into him, knocked him down, kicked him, and almost beat the life out of him. This kicking, so he claimed, paralyzed or destroyed the muscles of the arm and breast. It is certain that when he returned to the company he was a used-up man.

The claimant, in an affidavit made in May, 1881, endeavors to explain this statement of Covert by saying that the latter was mistaken, &c. But all the facts and circumstances are strongly corroborative of the correctness of Covert's relation. William H. Kurnes, a member of claimant's company, and one of the raiding force, states that after the tobacco was carried aboard the gunboats, "the soldiers dispersed for pillage. The boys helped themselves to whatever they found to their liking."

Hugh McElroy, a member of the same regiment, and well acquainted with claimant, states that—

The report current at the time, as affiant remembers it, was that Tom (McManus) had been skylarking about the town (Fredericksburg) with the boys, and, having become pretty drunk, got involved in a fight, and was terribly pounded and left disabled in the road. The men who beat him were rebels.

But it is not necessary to determine the point whether claimant was "pillaging" or "skylarking" when he received the alleged injuries for which he claims pension. Upon his own statement it is clear that he was not in the line of duty when he received the injury. It is not shown, except by his own statement, that he had permission to separate from his command and stroll about over the town. If he had, and if not engaged in any improper conduct, he was strolling about in pursuit of his private pleasure and to gratify his curiosity, and while thus engaged is injured. This was certainly not in the line of duty.

Again, there is no evidence as to the circumstances under which he received his injury, except his own statement. There is no record of any treatment while in the service, and the first medical advice and attention received after discharge appears to have been in February, 1880, when Dr. Siep was called in to see him. It is shown that he is laboring under some disability which partially interferes with steady or

heavy work, some of the witnesses saying that he could only work about *half* time. The claim was thoroughly investigated by the Pension Bureau (a special agent having been sent to the claimant's locality to look into and make a full and fair examination, which was done), and was rejected. It is before Congress upon the same evidence, and after carefully considering the case, your committee see no reason for reversing the decision of the Commissioner. The rejection was clearly correct, and your committee recommend that the bill be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 796.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 526.]

*The Committee on Pensions, to whom was referred the bill (H. R. 526) granting a pension to Joshua S. Dye, having examined the same, make the following report:*

That said Joshua S. Dye enlisted as a private in Company I, Fourteenth United States Infantry, 13th July, 1869, and was discharged from the service upon surgeon's certificate of disability on the 25th September, 1869. On the 30th June, 1870, he filed his application for pension, alleging as the basis of his claim that while in the service with his company at Lebanon, Ky., he from—

Exposure contracted the disease of the heart, and from the effect of said disease he became disabled for duty and disabled for performing military service, and consequently had to be discharged from said service, having contracted said disease while in said military service, and which disability now exists, and which he is satisfied is permanent, and that it is of such a character as to prevent him from performing labor in his trade.

After an investigation, not very thorough, the application was allowed and claimant was granted a pension of $8 per month from 26th September, 1869, which was increased to $15 per month from April 1, 1871, and to $18 per month from June 4, 1872.

On the 30th September, 1876, Special Agent John H. Wager notified the Pension Bureau that said Dye was in no worse condition than before his enlistment; that the mustering officer had refused to muster him; that he never was healthy, and was very dissipated, &c.

Upon receipt of this information the pension was suspended and a special agent (Arthur Shepherd) was appointed, under full written instructions, to make a careful examination and thorough investigation of the case, which was done in and near claimant's place of residence. This investigation was not only thorough, but was fairly and openly made, the claimant being in no way excluded from participating in the same. A great number of witnesses, including members of claimant's family, neighbors who had known him since a child, and those for whom he had worked before enlistment, were examined, and the fact was established beyond a doubt that claimant was affected with heart disease and was addicted to strong drink before his enlistment. It was shown that his mother and brother were both afflicted with heart disease. (They admit this themselves, and admit further that claimant was delicate from a child.)

Thomas B. Short, a neighbor, who has known claimant since his birth, states that said Joshua S. Dye worked in the same saddlery shop with him up to the time of leaving to go into the Army; that—

During the time affiant worked with the pensioner he would occasionally complain of his heart and breast to such an extent that he would have to stop work for a time. He was accustomed to drink considerably before he enlisted. His trouble with his heart and breast, while at work, consisted in shortness of breath, an apparent smothering sensation, and dull pains. Affiant did not consider him a sound ma ..

W. R. Carson, a justice of the peace, an old resident of the neighborhood, engaged in the saddlery business, states that he has known said Dye since his boyhood; that—

When the pensioner was about fifteen years of age he was apprenticed to this affiant by his father to learn the saddlery business. He used to be constitutionally opposed to work, and complained that he could not work at the saddlery trade, as it hurt his breast and caused him pain about the *heart*. * * * The pensioner is in affiant's opinion no worse in health now than he was before he enlisted, except that he has aggravated his disease by the excessive use of intoxicating liquor.

H. P. Young, a neighbor, who has known claimant for many years before enlistment, says:

He was always a slight, weakly youth, predisposed to disease of the *heart* and *lungs*.

Silas Baugh states that he—

Has known him (Dye) ever since he was a child, and knows that he was always a weak, worthless lad, who would not work, and seemed always complaining. Knew his mother; she has been afflicted with disease of the heart for many years.

John C. Cagle states that he has known claimant since a child:

He was always a slight, weakly boy, and, as he grew to young manhood, he appeared to become debilitated. During the whole of pensioner's life, from the time he was fifteen years old to the present (October 15, 1877), the pensioner has been addicted to the excessive use of strong drink.

Lavinia Walls states that she has known claimant intimately since a child; that—

From the time of his birth to the present time (October, 1877), the pensioner has been a weak and sickly person, and, as he grew to young manhood, his heart seemed affected. He never did any work of consequence; in fact, never appeared to be able to do it.

Samuel Burton states that he has known claimant all his life; that he—

Was always a delicate youth, predisposed to an affection of the heart when excited; that the whole family (males) are inclined to the excessive use of intoxicating liquor.

Mrs. Judy Burton, a neighbor and intimate friend of the Dye family, states that she has known the claimant since his infancy; that he was always delicate, and—

As he grew to manhood he seemed to become weakly, and occasionally had sick spells with his heart. * * * Mrs. Dye, the mother of pensioner, has, for all the time affiant has known her, been afflicted with heart disease. Pensioner's brother, Fletcher, is also subject (since youth) to spells of heart disease.

These are all reputable witnesses—residents of the neighborhood—who testify *affirmatively* to the fact that claimant was afflicted with heart disease before his enlistment. This evidence is not contradicted or overcome.

Dr. H. L. Barber, a physician of the neighborhood, says he knew the pensioner before his enlistment and up to the present time; that—

Before his enlistment, affiant remembers the pensioner as a young man of slight frame, but does not remember that he ever heard of or of his indicating any affection of the heart. The pensioner is thoroughly addicted to the use of intoxicating liquors.

This does not amount to any contradiction of the strong and positive testimony above set forth. Dr. Barber simply never heard of claimant's having heart affection. He was not the family physician, and his lack of knowledge or information cannot outweigh the direct statements of reliable witnesses. That claimant was afflicted with heart disease at the time of his enlistment is not only established by the above strong array of affirmative proof, but is confirmed by the statement of George W. Davis, the captain of claimant's company, who says that, during the two months the claimant was with the command, he was unfit for duty forty days. It is not shown that he did a single day's duty. It is not shown that he was exposed an hour while with his company. Captain Davis says:

> His nervous constitution seems to be very weak, and he has never rendered any service of value to the government. His disability is, in my opinion, solely due to constitutional defects. He seems to be suffering from lung disease, which could not probably have been discovered at the time of enlistment.

It does not appear that claimant was ever actually mustered, or that he passed any proper medical examination; but, whether he did or not, it is clearly shown that he was diseased before entering the service; that he rendered no service calculated to produce the disease of which he complains; and that his condition is no worse now than before his enlistment.

The action of the Commissioner upon the claim was correct, and a careful examination of the case fails to disclose any good grounds for reversing his action.

In the opinion of your committee, claimant is not entitled to any relief at the hands of Congress, and they, accordingly, recommend that the bill be indefinitely postponed by the Senate.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 797.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1808.]

*The Committee on Pensions, to whom was referred the bill* (S. 1808) *granting a pension to Harriet E. Edwards, have examined the same, and report:*

That the widow's application for pension in this case was rejected upon the ground that the cause of death did not originate in the service in line of duty. The decedent was eighty years old when he died. Your committee discover no error in the decision of the Commissioner in this case, and therefore recommend that the bill be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT 797, Part 2.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill S. 1808.]

The Committee on Pensions, to whom was referred the bill (S. 1808) granting a pension to Harriet E. Edwards, having carefully examined the same, submit the following reasons why they think the bill referred to the committee should pass:

That David S. Edwards, husband of the claimant, entered the naval service as acting surgeon's mate July 30, 1818; was in active service until April 21, 1861. He died 18th of March, 1874, holding the rank of medical director at the date of his death. His age at the time of his death was eighty years. Dr. Robert Hubbard certifies that—

The immediate cause of his death was apoplexy, predisposed by the degeneration of the cerebral arteries. I further declare my belief that frequent and severe attacks of climatic disease while in the service and in the line of duty were efficient causes in determining and hastening his death.

The widow's application for a pension was rejected at the Pension Office upon the ground that the cause of death did not originate in the service in line of duty. Dr. Hood, medical referee, says:

The decedent in this case was eighty years old at date of death, and I look upon it as impossible to bring the claim within the law. As age advances tissues degenerate, and certain forms of apoplexy, or a certain form, are (or is) apt to be incurred in old age. As the decedent spent more than half a century in service and in line of duty, and as each recurring year added to the degeneration or change of age, so it is true that the changes which finally ended in infraction of a vessel of the brain must have been incurred in service and in line of duty. It is none the less true that he died of changes induced by age, and not in consequence of any exposure, or hardship, or other cause, incurred because of the service. I cannot, of course, undertake to say that he would not have lived to have been ninety or even one hundred years old in civil life; I can only say that the presumption must be that he died of old age. I look upon this as a good special-act case, but not admissible under the general law.

The widow is shown to be in straitened circumstances; and in view of all the facts and circumstances, and without intending this to be a precedent in cases where the officer's death occurs while on the retired list, from causes not actually traceable to the service, the committee recommend the passage of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 798.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1742.]

*The Committee on Pensions, to whom was referred the bill (S. 1742) granting an increase of pension to Mohammed Kahn, otherwise John Ammahoe, have examined the same, and report:*

That there is among the papers no proof as to the present disability of the pensioner, nothing showing that he is entitled to an increase of pension, and recommend that the bill be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 799.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3316.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3316) granting a pension to David Darling, having carefully considered the same, report as follows:*

That the House of Representatives, at the present session, have passed a bill granting a pension to the said Darling.

It appears from the evidence on file that the claimant alleges a gunshot wound in left side, received in the battle at Dallas, Ga., and further alleges that that wound was through the left lung; and that at about the same time, to wit, August 14, 1864, he contracted rheumatism, which first showed itself in left ankle, but has now spread all over his body.

The affidavit of claimant, filed June 28, 1875, says he enlisted at Monticello, N. Y., August 14, 1862, in One hundred and forty-third Regiment New York Volunteers, as a private; that he was wounded in left breast by the enemy in line of duty in battle of Dallas, Ga.; that he was discharged on account of said wound as being unable to do military duty; that after he came home he was very much disabled on account of said wound; that his medical advisers were Dr. Litchen, since deceased; his next physician was Dr. Irwin, since deceased. Afterwards, that the said Darling employed Dr. Fishburn; that the disability from the wound has been continuous; and furthermore that the said Darling has frequently raised blood, and that he was in the Totten Hospital, Kentucky, for over a year. Since his discharge for disability the said Darling has never served in the Army or Navy.

The Adjutant-General's record shows that the roll for May and June, 1864, says: "Absent, sick, Totten Hospital, Louisville, Ky.; cause, wound received in battle near Dallas." Roll for July and August, 1864, shows that he was still absent on account of said wound. And the muster-out roll, dated July 20, 1865, shows that said Darling was still confined in Louisville, Ky. The roll for the months just preceding the wounding of said Darling report him "present for duty."

The Surgeon-General reports the case as follows:

> Treatment in Totten Hospital from June 6, 1864, for wound over ninth rib, near costal articulation, fracturing rib, received Dallas, May 25, 1864, and was returned to duty October 9, 1864.

There appears to be a slight discrepancy in the above Surgeon-General's record as to the duration of the time spent in hospital; the record

of the Adjutant-General and the claimant's own affidavit alleging a longer period, and inasmuch as his discharge was for the disability, the presumption is in favor of the record of the Adjutant-General being correct.

In the certificate of disability for discharge, the post surgeon, Dr. Otis Hoyt, says he—

> Found him disabled because of tubercles of the lungs, following a gunshot fracture of eighth rib, and attended with frequent attacks of hemorrhage. Wound received in battle at Dallas, Ga., May 25, 1864, while in line of duty and service of the United States, He is one-half disabled, and his physical condition is not suitable for the Veteran Reserve Corps.

The Pension Office rejected the case for want of medical evidence covering the period in which the claimant alleges he was treated by the two doctors who died before their evidence could be secured. There is a great abundance of evidence on file as to the soundness of the said Darling at the time of enlistment.

M. D. Myers, a member of the same company and regiment, was in the battle of Dallas, Ga., at the same time claimant was wounded; stood right behind him, and caught him when falling.

Dr. J. H. Fishburn, in an affidavit filed June 28, 1875, says he has known claimant for two years; has been his family physician three years; did not know him personally the first year, as he was absent from home.

> I have examined his wound, and find that it has injured the cardiac portion of his stomach, affecting that organ physically, causing indigestion and general gastric weakness and irritability; coughing causes severe and painful retching; rich or heavy food is digested with great difficulty, it often being thrown off. These symptoms go together to cause general weakness, manifested to a considerable extent in the thorax viscera, viz, bad circulation and imperfect respiration. The hemorrhage he has had, and described to me, I consider gastric, and entirely the result of said wound; do not consider him able to work at hard labor; as he advances in years he will be more affected from year to year. The disability now existing in his case I consider to have been continuous, and increasing from the time of receiving the wound, which I consider to have been the whole cause of his difficulty.

In another affidavit Dr. Fishburn testifies to the wound being through left lung, permanently disabling him. In many other affidavits considerable testimony is produced showing rheumatism, but the evidence is not conclusive as to its being contracted in the service; however, inasmuch as the evidence goes back to the year 1867, there is a reasonable presumption that it might have resulted from service. However this may be, your committee are inclined to believe that the present condition of claimant's lungs, and his general physical disability, are directly attributable to the wound through his lungs, and that his inability to clearly establish a connected chain of evidence is due, mainly, to the death of the two physicians, as appears in the evidence, who treated the said Darling in the period intervening between his discharge and the time the medical evidence commences.

Your committee are of the opinion that the case is as well proven as the circumstances will admit, and therefore recommend that the bill (H. R. 3316) be passed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 800.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 369.]

*The Committee on Pensions, to whom was referred the bill (H. R. 369) granting a pension to Jacob R. McFarren, have carefully examined the same, and report:*

That said McFarren was discharged for physical disability, after six months' service. He was evidently sick in the Army, and came out of the service in bad condition. He had for years no medical attendance on account of his poverty, and made no application for pension until 1875. Proof of medical attention commences about 1874, but shows the same difficulty as existed at time of discharge. The committee recommend that the bill do pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 801.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 6401.]

*The Committee on Pensions, to whom was referred the bill (H. R. 6401) granting a pension to Amelia Ann Wilson and her minor children, having considered the same, report:*

The applicant is the widow of Marcellus Wilson, who was a soldier in the Mexican war, having married him in 1862. She has two children now, one sixteen, and one, Alice A. Wilson, who will become sixteen on the 31st day of October, 1883. Wilson was discharged for disability, and obtained a pension December 11, 1847, for an injury to his spine, which he received in service. He drew his pension until March 4, 1865; failing thereafter to apply for more than three years, he was dropped from the rolls July 27, 1868. He applied for restoration July 2, 1870, was examined by a surgeon of the Pension Office, who reported no disability traceable to the original injury, and his application was therefore rejected.

He applied again May 15, 1874, when he was examined by the full board of surgeons in the Pension Office, who report him to be a chronic dyspeptic, but not to be suffering from his original injury. Upon this report his application was again rejected. It was renewed August 5, 1878, accompanied by an affidavit made by Dr. I. J. Crouse, setting forth in the most positive terms that Wilson was then entirely disabled by paralysis and was a total wreck; that he had attended him since 1865; that he had had several attacks of partial paralysis, covering the period from 1865, and that he believed such attacks and his then condition were the result of the original injury to his spine. The case was again refused at the Pension Office, appealed to the Secretary of the Interior and the rejection sustained.

Application was then made to Congress, and a special act granting Wilson a pension was passed June 20, 1878. He died March 23, 1879, of paralysis. His widow applied for a pension April 21, 1879. Her application was rejected on the ground that the paralysis of which the soldier died was not the result of the injury received in the service.

Congress seems to have passed upon the question, whether the paralysis from which the soldier suffered in 1878 and from which he afterwards died, was due to the injury received in the service in passing the act granting him a pension, and while the evidence on which that was based was meager and in some respects unsatisfactory, your com-

mittee, in view of the fact that the right of the widow to a pension rests upon the same ground upon which the pension was granted to her husband, are disposed to accept the previous action of Congress as final in the matter, and recommend the passage of the bill with an amendment.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 802.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 615.]

*The Committee on Claims, to whom was referred the bill (S. 615) to authorize the accounting officers of the Treasury to consider and pass upon certain claims now pending before them, have considered the same, and respectfully report:*

That the facts in the case are correctly set forth in the report on this bill made by Mr. Chapman, from the Committee on War Claims, House of Representatives, April 20, 1882, and the necessity for the passage of the bill is therein clearly shown.

Your committee therefore adopt the conclusions of said report, and report back said bill (S. 615) with the following amendment:

Strike out all after the word "estate," in line 7 of said bill, and insert, "where it appears that there was an express contract for compensation, or that the officer ordering the occupation or taking intended at the time thereof that compensation should be made therefor," and, when so amended, recommend that it do pass.

O

TH CONGRESS, 1st Session. } SENATE. { REPORT No. 803.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1274.]

*e Committee on Pensions, to whom was referred the bill (S. 1274) for he relief of Mrs. Sarah B. Franklin, having examined the same, submit he following report:*

Your committee find that the bill in this case asks for payment for thing and property destroyed at Pensacola, Fla., to prevent the ead of yellow fever, and are of opinion that the bill does not properly ne before your committee for consideration.

There is no evidence whatever in the papers on file in this case relat- to the subject of the bill or tending to show the destruction of any perty.

Your committee therefore ask that they be discharged from the further sideration of the bill, and that it be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 804.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1566.]

*The Committee on Pensions, to whom was referred the bill (S. 1566) granting relief to the heirs of Jacob Cramer, report:*

That, after carefully examining the papers on file, your committee adopt the reasons given in the brief of the Commissioner of Pensions, and are of the opinion that the bill should not pass. The brief referred to is as follows:

DEPARTMENT OF THE INTERIOR, PENSION OFFICE,
*Washington, D. C., May* 31, 1882.

SIR: In response to your personal inquiry, through your clerk, in the matter of a bill for the relief of the heirs of Jacob Cramer (S. 1566), I have the honor to state that the only heirs of Revolutionary soldiers now entitled to military bounty land warrants, under the general laws, are widows and those children who were less than twenty-one years of age on March 3, 1855, and as it is improbable that any children of this class of soldiers were so young on that day, those who could claim are narrowed down to a few widows, if there be any such, where all just claim has not been satisfied.

It seems appropriate in this connection to refer to the history of the issue of bounty land warrants for service in the Revolutionary war. At an early period of the war, and very soon after the Declaration of Independence, Congress offered a land bounty, varying from 100 to 1,100 acres, according to the rank held, to all officers and soldiers who should continue in service to the end of the war, and to the heirs of such as should be slain. Immediately after the close of the war land warrants were prepared for all who were entitled them, in pursuance of the laws authorizing the issue of the same, by the Secretary of War, and awaited only a claim by the proper party. And it appears from the statements of those most likely to know the facts that nearly all those having any right under those laws obtained satisfaction of those rights before the beginning of this century. In the year 1800 the War Department, with all the records pertaining to the issue of the aforementioned land warrants, was destroyed by fire. It is impossible, therefore, to determine now whether a land warrant was or was not issued in any particular case unless the warrant had been actually located prior to 1800. Such warrants are known to be still in existence unlocated.

On April 15, 1806, and subsequently from time to time to June 26, 1858, the issue of bounty land warrants for Revolutionary service was continued by acts of Congress. But it is understood to have been the experience of those charged with the execution of those acts that a claim was rarely made in which the soldier or his heirs had not, in all probability, received a warrant, and perhaps more than one.

It will be observed that Jacob Cramer would not have been entitled to a land warrant under these old laws, because he did not serve until the end of the war. No claims can now be allowed under those laws, because they have expired by limitation. But under the act of 1855 this gratuity (limited to 160 acres) was granted to all soldiers of that war who had served fourteen days, and, if dead, to their widows or minor children. This is the only provision of the bounty land laws which could have benefited Cramer or his heirs for his services during the war of the Revolution. But it is supposed that no one of his heirs of the classes mentioned in the law is now living to take the benefit of the act. If the benefits of the general laws are to be extended to other heirs of Cramer than those embraced by those laws, it would seem but just

that they should have no more than he or his heirs would have been entitled to under said laws, viz, 160 acres.

It is not believed that there is any precedent for such an act as the one contemplated in the inclosed bill—none which extended the benefits of the bounty land laws beyond the widow and minor children in the line of descent. Such a precedent might prove quite troublesome, as there are very many of the remote descendants of Revolutionary soldiers now inquiring after the warrants issued under the aforesaid old laws, and in regard to their rights as heirs of said soldiers. It might finally result in the granting over again of perhaps one out of five of the warrants issued under the early acts, because the aforementioned destruction of the War Department records has blotted out the evidence of the issue of nearly or quite that proportion of the warrants issued prior to the act of March 3, 1855.

But in this and in all similar cases a great difficulty would present itself in the adjudication of the claim, unless this office were authorized by the act itself to issue and deliver the warrant to some single one of the heirs of the soldier, upon proof of the heirship of such one, leaving the question of distribution to be settled by the courts. If all the heirs were required to prove their title to the satisfaction of this office, it would involve in many cases, and not unlikely in this, the compiling of a voluminous genealogy; and whether the heirs were required to prove their right here or in court, it is a matter of doubt whether the cost to them would not considerably exceed the value of the warrant.

Even if a warrant of the denomination proposed (200 acres) should be issued by this office, there is a question whether it could be located and patented unless special provision therefor is made in the act. But this is a question that can better be answered by the Commissioner of the General Land Office.

Very respectfully,

W. W. DUDLEY,
*Commissioner.*

Hon. J. N. CAMDEN,
*United States Senate.*

Your committee report adversely, and recommend the indefinite postponement of the bill.

O

7TH CONGRESS, 1st Session. } SENATE. { REPORT No. 805.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Ir. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4372.]

The Committee on Pensions, to whom was referred the bill (H. R. 4372) ranting restoration to the pension rolls of Robert P. Walker, have examined the same, and report recommending the restoration to the pension rolls by the passage of the bill.

The House report states the facts as follows:

Robert P. Walker was a private in Company H, Ninety-fourth Ohio Volunteer Infantry, and was discharged from the service of the United States on surgeon's certificate of disability on the 12th day of November, 1862, being on that date an inmate of United States Army hospital at Louisville, Ky. The soldier had been, immediately previous to his admission to hospital, on a long march, and had suffered much from fatigue and exposure, and during which, while in the line of duty, he had contracted hernia and rheumatic fever. By long confinement to his bed by the latter disease a spontaneous cure of the hernia was favored, and actually took place. From the day his soldier was sent to hospital he has never been able to leave his bed without assistance.

He was pensioned on account of chronic rheumatism, but his name was dropped from the rolls March 4, 1874, for the alleged reason that the disability on account of which pension had been allowed (rheumatism) existed prior to enlistment, and that the attack of rheumatism from which the soldier suffered when discharged was but a recurrenae of the old disease.

An appeal from the decision dropping him from the rolls was taken and decided against the soldier by Mr. Schurz, Secretary of the Interior. This decision, as well as that of the Commissioner of Pensions, was based upon a report by a special agent sent by the Pension Office to make an examination into the facts at the soldier's place of residence.

The following extracts are given from the report of the special agent:

"This man's condition is truly pitiable. For six or eight years immediately after his discharge he was confined to his bed by inflammatory rheumatism, and when the disease finally relaxed its grasp it left ample proof of its severity in his distorted and stiffened limbs, which destroy his usefulness, and place him as a burden upon the kindness of his friends. * * *

"Rheumatism in this case is a family disease, and was transmitted to the pensioner by his parents. * * * The boy suffered from an attack of rheumatism five years before he enlisted."

It is in evidence that about five years previous to his enlistment Walker suffered from an attack which may have been of the nature of rheumatism. It did not confine him to the house more than a week, although he suffered from aching of the limbs and stiffness of the joints for some time afterwards. The family physician designated the disease at that time "growing pains."

There is no doubt but that he entirely recovered, and remained well and worked on his father's farm until he enlisted. He was strong and healthy at this time, performed his duty as a soldier faithfully and efficiently, and immediately previous to the attack on account of which he was sent to hospital he marched a hundred miles with his command.

The opinion of the chief medical officer in the Pension Office was in opposition to the assumption that the rheumatism, on account of which the soldier was pensioned, had been contracted prior to his enlistment. He employs the following language:

"In my judgment such admission was wrong, for, *as a rule*, an attack of rheumatism

does not depend upon any antecedent attack, but upon causes incurred at the moment. The *rule* is, that the subject of an attack recovers perfectly and has a second and other recurrent attacks only upon exposure; and so, unless the attack incurred previous to his service in the Army had caused structural changes, leaving a permanent disability, I would not admit its influence. * * * A recurrent attack is no more dependent upon an antecedent one than the 'cold' of this month is caused by the cold of last month or last year. * * * There is also very grave doubt as to the soldier's having had rheumatism for some years prior to his enlistment. The legal branch holds that it is *proved* he had rheumatism prior to enlistment. * * * If the question is as to predisposition, restoration is the correct action. * * * It was not that attack (some years previous to enlistment) which disabled him, but the attack which originated in the service. * * * The appellant should be restored to the roll."

It seems to your committee that whatever doubts existed as to the influence of the attacks which the soldier had in his early boyhood several years previous to his enlistment (and it was of a mild character and of short duration) in producing the attack which confessedly was the cause of the disability on account of which pension was allowed, ought to have been resolved in favor of the claimant.

The committee therefore report the bill back with the recommendation that it do pass, so amended as to strike out all after the word "volunteers" in line 6.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 806.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 723.]

*The Committee on Pensions, to whom was referred a bill (S. 723) granting a pension to George M. Chester, have considered the same, and report:*

That the said George M. Chester was a sergeant in Company G, Twenty-fourth Regiment New Jersey Volunteer Infantry. Shortly after his discharge from the Army he applied for a pension, because of disability caused by the loss of the second and third fingers of his left hand, resulting from the accidental discharge of his musket while in the line of duty. He was placed on the pension rolls first at $4 a month, to date from June 30, 1863, and subsequently at $6 a month, to date from February 7, 1878. On March 22, 1880, he applied for an increase of pension because of disease of his hip, which, he alleges, was contracted in the service while in the line of duty, and which he claims that for a long period he mistook for rheumatism. He produced the testimony of several comrades to prove that on several occasions while in the Army he complained of pain in his hip. On the other hand, there is a large amount of testimony from those who saw him frequently and knew him well that he showed no sign of lameness until some ten years after his discharge from the Army. The Commissioner of Pensions rejected the application for increase of pension because of his disease, on the ground that it did not appear that it originated in the service or was traceable thereto, and upon appeal to the Secretary of the Interior that decision of the Commissioner was affirmed.

Your committee, after reviewing the testimony in the case, while they realize its conflicting character, do not feel that the testimony tending to connect the hip disease with the service is sufficient to justify them in reversing the decision of the Pension Department.

The bill referred to them proposes to increase the pension of George M. Chester from $6 to $24 a month, and to give him arrears from the 1st day of January, 1870. Your committee recommend that it be indefinitely postponed.

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TH CONGRESS, } SENATE. { REPORT
1st Session. } { No. 807.

# IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1661.]

*e Committee on Pensions, to whom was referred the bill (S. 1661) granting a pension to Mary E. McConnell, have had the same under consideration, and report:*

That Mary E. McConnell is the widow of Robert McConnell, who was rivate in Company F, Eleventh Regiment Iowa Volunteers, who ented September 23, 1861; re-enlisted as a veteran January 1, 1864; istered out July 15, 1865, with the remark, "absent on furlough since ne 24, 1865."

The records of the Surgeon-General's Office show that on August 15, 64, he was admitted to field hospital for treatment for acute diarrhea d dysentery, and returned to duty August 25, 1864.

Dr. Willis testifies that he was first lieutenant in Company F, eventh Regiment Iowa Volunteers, from September, 1861, until Sepnber, 1862; that in July, 1863, he was commissioned assistant surgon of said regiment, which position he held until the close of the war; at in April, 1862, McConnell was attacked with chronic diarrhea, d during all the following summer was unfit for duty; that from and er July, 1863, to the close of the war he was familiar with McConnell d treated him for said disease; that all this time said McConnell was at any time free from said disease, which had assumed a tuburcular ndition, and he was very frequently unfit for duty; that from Mcnnell's discharge to the time of his death he occasionally saw him t did not treat him, but was satisfied that he was still suffering from same disease. In this connection it is proper to note that the reort of the Adjutant-General makes no mention of McConnell's absence unfitness for duty prior to August, 1864.

Dr. McClellan testifies that he was McConnell's physician prior to istment; that he was in robust health at enlistment, but that when returned, about July 16, 1865, he was in a condition of great debility d had chronic diarrhea; treated him a short time before he died, but was only temporarily employed, and his condition remained about same; he was in such condition that if attacked by any acute disse or inflammation at any time after his discharge it would very probaprove fatal.

Dr. Burroughs testifies that he was called to attend the soldier and ind him suffering from effects of blood poison, caused by vitiated and praved condition of his physical system, which resulted fatally in ree or four days.

Benj. J. McConnell testifies that he was a comrade of the soldier; that he became sick in April, 1862, and never fully recovered; was feeble when discharged and never recovered therefrom.

That a few days before his death he received a slight cut in one of his feet, which, on account of the previous condition of his whole physical system, caused something of the nature of erysipelas to set in, which caused his death in two or three days.

It is quite apparent from the foregoing that the cause of McConnell's death did not originate in the service.

To what extent McConnell's enfeebled and diseased condition contributed to aggravate the inflammation which set in by reason of the slight wound of his foot would be impossible to determine; that it did so contribute to some extent is most likely, but your committee think it would be setting a dangerous precedent to grant a pension upon such grounds. To do so would be to invite applications for pension by dependent relatives upon the death of every soldier, and each case would only furnish fresh evidence of the ingenuity with which facts and theories would be made to do duty in showing that each soldier's death was in some way caused or hastened by the fact that he was once in the military or naval service of the United States.

Your committee recommend that the bill do not pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 808.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of Eliza H. Ramsay, widow of General George D. Ramsay, of United States Army, praying that a pension be granted to her, have examined the facts in the case, and submit the following report:*

It does not appear that General Ramsay died of disease contracted in the line of duty.

The committee therefore recommend that the petition be indefinitely postponed.

# VIEWS OF THE MINORITY:

Mr. BLAIR, for the minority of the Committee on Pensions, to whom was referred the petition of Eliza H. Ramsay, having carefully examined the same, submit the following report of their views, and recommend the passage of the accompanying bill granting pension at the rate of $50 per month.

The applicant is the widow of the late Brig. Gen. George D. Ramsay, United States Army, who died at Washington, D. C., May 22, 1882.

General Ramsay entered the United States Military Academy August 20, 1814, graduated therefrom, and was appointed second lieutenant of artillery July 1, 1820. He served continuously and faithfully, being successively promoted through each grade of rank until he was finally appointed brigadier-general and Chief of Ordnance of the United States Army, September 15, 1863. On September 12, 1864, he was retired from active service.

At the time of his death General Ramsay was the oldest graduate of the Military Academy in the Army. Counting from the time he entered the Academy, he had served the government longer than any living officer of the Army, and only one living officer had held commission longer than he.

General Ramsay died May 22, 1882, leaving no estate, and of his family his widow and three daughters were dependent on him for support. Mrs. Ramsay is the owner of the house in which the family reside, but she is left without means or income for her maintenance, and is so physically disabled as to be helpless.

It appears to your committee that the extraordinary length and valuable character of the services of General Ramsay entitle his widow to

the aid of the government in her helpless condition, and that a pension of $50 a month is both just and necessary; and, in view of the action of the government in other cases, it seems difficult to deny her this sum for the remainder of her life.

We accordingly report the accompanying bill, and recommend its passage.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 809.

IN THE SENATE OF THE UNITED STATES.

JULY 8, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 2133.]

*The Committee on Pensions, to whom was referred the petition of Mrs. Ann Cornelia Lanman, widow of the late Rear-Admiral Joseph Lanman, praying for an increase of pension, having examined the facts in the case, respectfully submit the following report:*

Admiral Lanman entered the naval service of the United States as a midshipman, January 1, 1825, and passed through all the grades of the service up to rear-admiral. He served during the late war, and distinguished himself at the attack on Fort Fisher under Admiral Porter. Admiral Lanman was officially recognized for gallant service throughout the war. In 1869 he was promoted to be a rear-admiral, and placed in command of the South Atlantic fleet, where he served three years. On his return from this command he was placed on the retired list.

On the 20th of February, 1874, he received a telegram from Secretary of Navy Robeson to report at Washington, D. C., as a witness. The order was received by him at five o'clock in the afternoon, and he left for Washington the same evening. On that journey he contracted a very severe cold, and when he reached home he was scarcely able to walk. He immediately took to his bed, and grew worse until the 13th of March, 1874, when he died. The physician who attended him in his last sickness swears that he died of pneumonia, contracted during his journey to Washington as above stated.

The evidence shows that Rear-Admiral Lanman left a widow, the present claimant, and two minor children, to wit, Alice Blanche and Rosalie Decatur, aged, respectively, ten and twelve years.

A pension of $30 a month was granted to Mrs. Lanman by special act of Congress. This was the pension allowed by law at that time in the cases of the widows of admirals, so that the special act gave Mrs. Lanman the full benefit of the law at that time. Now she petitions Congress to increase the pension allowed her to $50 per month, on the ground that her present pension is inadequate to the support of herself and her children.

In connection with this petition for an increase of pension, it is pertinent to inquire into the equity which has governed the committee's action in similar cases.

By the pension law, as it existed prior to the act of July 14, 1862, the pensions granted to officers of the Navy, and to their widows and minor

children, in case of death, were made equal to the half monthly pay of such officers, such pay as existed in 1835, which forms the basis upon which such pensions were granted. These pensions were payable from the interest of the naval pension fund. By this law rear-admirals, their widows, &c., received a pension of $50 a month.

The act of July 14, 1862, established pensions for the Army and Navy according to rank, making Navy pensions correspond with Army pensions. By this act of July 14, 1862, the pension granted to rear-admirals was reduced to $30 a month. The act of July 14, 1862, was construed as affecting only pensions which should be granted after the passage of said act.

Section 3 of the act of July 25, 1866, provided—

> That the provisions of an act entitled "An act to grant pensions," approved July 14, 1862, and of the acts supplementary thereto and amendatory thereof, are hereby so far as applicable extended to the pensioners under previous laws, except revolutionary pensions.

In applying this act no reduction of the naval pensions previously granted was made.

Section 13 of the act of July 27, 1868, provided—

> That the third section of an act entitled "An act increasing the pensions of widows and orphans, and for other purposes," approved July 25, 1866, shall be so construed as to place all pensioners whose right thereto accrued subsequently to the war of the Revolution and prior to the 4th of March, 1861, on the same footing as to rate of pension from and after the passage of said act as those who have been pensioned under acts passed since said 4th day of March, 1861, and the widows of revolutionary soldiers and sailors now receiving a less sum shall hereafter be paid at the rate of $8 per month.

Under this act, upon the decision of the Secretary of the Interior, naval pensions already granted were reduced to the rates provided in the act of July 14, 1862, such reduction taking effect from the last half yearly payment made prior to February 10, 1870, the date of the decision.

This decision gave rise to the passage of the act approved June 9, 1880, entitled "An act to restore pensions in certain cases," which provides—

> That section three of an act entitled "An Act increasing the pensions of widows and orphans and for other purposes" approved July twenty-fifth Eighteen hundred, and sixty six, and section thirteen of an act entitled "An act relating to pensions" approved July twenty seventh, Eighteen hundred, and sixty eight, and section forty seven hundred, and twelve of the Revised Statutes shall not operate to reduce the rate of any pension, which had actually been allowed to the Commissioned Non Commissioned, or petty officers of the navy, or their widows, or minor children prior to the twenty fifth day of July, Eighteen hundred and sixty six: And the Secretary of the Interior is hereby directed to restore all such pensioners as have already been so reduced to the rate originally granted and allowed, to take effect from the date of such reduction.

Under this act, such pensioners as had been reduced under the decision rendered by the Secretary of the Interior, February 10, 1870, were restored to their original rate of pension.

All those widows, &c., of rear-admirals who have applied for a pension since the rendering of the decision of the Secretary of the Interior, February 10, 1870, have only been granted a pension of $30 per month, which presents the inconsistency of a portion of rear-admirals' widows receiving $50, while the balance are pensioned at $30 a month, without difference of rank, merit, or long service. Since the restoration of this class of pensions to $50 per month by the act of June 9, 1880, the widows who are allowed but $30 per month at the Pension Office under the act of July 14, 1862, have from time to time applied to Congress for an in-

crease of pension from $30 to $50, and for original pensions of $50 per month, and such increase, or original granting of pensions at $50 per month, has frequently occurred during the present session of Congress. (See Mr. Teller's report, Elizabeth Wirt Goldsborough; Mr. Jackson's report, Louisa Bainbridge Hoff; Mr. Platt's report, Rebecca Reynolds; Mr Platt's report, Elizabeth H. Spotts.

Some of these cases are for long and meritorious services, and for original pension; others for an increase from the $30 allowed by the Pension Office to $50. In the report of the case of Admiral Goldsborough, where it is not alleged that he died of any disease contracted in the line of duty, or even in the service, the concluding clause in the Goldsborough case is as follows:

> Such a record of service, in the opinion of the committee, justifies the payment to his widow of the same pension allowed in other cases by special act of Congress to the widows of other officers of the Navy of similar rank. The committee therefore recommend that Senate bill 743 be passed.

That concluding clause is open to but one conclusion, to wit, that Mrs. Goldsborough's pension was a gratuity pension for the long and meritorious services of her husband.

Regarding any objection being raised to the granting of a pension to Rear-Admiral Lanman's widow on the ground that he was on the retired list, it is proper to say that Admiral Goldsborough was retired in 1874 and died in 1879, and Admiral Hoff was retired in 1869 and died in 1878. Therefore they were both on the retired list at the time of their death.

Now, the widow of Rear-Admiral Lanman is entitled to a pension to a greater extent than the widow of an admiral whose only claim was long and meritorious services, as her husband died directly from a malady contracted in obeying an order of the Secretary of the Navy, and within a few days after contracting the disease.

The $30 pension granted by special act was acceptable to Mrs. Lanman until others of no greater merit were increased to $50. The inconsistency of her receiving but $30 became apparent, and no reason prevailing why her case should be an exceptional one, she thought it proper to ask Congress by a special act to remove this inconsistency.

Inasmuch as the Forty-sixth Congress thought proper to increase certain cases of the widows of admirals to $50 (see Lelia E. McCauley, p. 609 Stats. at Large, 1879–'81, and Ann M. Paulding, 608 Stats. at Large, 1879–'81), and have frequently seen fit in the present Congress to grant the same pension in similar cases, your committee can see no good reason why Mrs. Lanman should not receive a like pension, and therefore report a bill to that effect, and recommend its passage.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT 809, Part 2.

IN THE SENATE OF THE UNITED STATES.

JULY 2, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill S. 2133.]

*The undersigned members of the Committee on Pensions, not concurring in the report of the majority upon the bill (H. R. 4795) granting an increase pension to Mrs. Ann Cornelia Lanman, respectfully submit the following views of the minority:*

Rear-Admiral Joseph Lanman, whose career as a naval officer is fully set forth in the majority report, was placed upon the retired list of the Navy in 1871 or 1872. On the 20th of February, 1874, he received a telegram from the Secretary of the Navy to come to Washington, D. C., as a witness before a naval court-martial. He left for Washington on the same evening he received the notice. On the trip he contracted a severe cold, and when he reached home was quite unwell; immediately took to his bed and grew steadily worse until the 13th March, 1874, when he died. The physician who attended him in his last sickness states that he died of pneumonia contracted during his trip to Washington as above stated. He left a widow (the present applicant for increase of pension) and two minor children, aged respectively ten and twelve years.

Under the general law Mrs. Lanman was not entitled to a pension, the disease of which her husband died not having originated in the service, and because contracted subsequent to the 27th day of July, 1868. The second section of the act of July 27, 1868 (now contained in section 4694 of the Revised Statutes), denies the right to pension in cases like that of Admiral Lanman, unless the officer was— .

At the time of contracting the disease, borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way by direction of competent authority to the United States or to some other vessel or naval station or hospital.

Mrs. Lanman accordingly applied to Congress for a pension, and by special act approved March 3, 1879, she was granted a pension of $30 per month in consideration of the long and distinguished service of her husband. She now asks Congress by another special act to increase her pension to $50 per month, resting her application upon the same considerations which induced its former action, together with the further averment in her petition that her present pension is not *adequate* for the *support* of herself and minor children. It does not appear what estate Admiral Lanman left, nor what are the present circumstances of his widow and children. It is not shown that they are in want or that the increased pension asked for is necessary for the widow's comfortable support. Nothing of the sort is alleged. But it is said in support of

her application that she should be granted the same rate of pension allowed the widows of Rear-Admirals Goldsborough and Hoff at the present session of Congress. In the case of Rear-Admiral Hoff it clearly appeared that he died of disease contracted in the *service* and in the line of duty. In the Goldsborough case the report does not show the facts and circumstances connected with his death. In neither of these cases was there a *second application* to Congress upon the same state of facts on which special relief had been granted. And in the cases referred to there were special considerations, such as the necessitous circumstances of the applicants. But whether these cases can or cannot be distinguished from the present by any meritorious or special considerations, we think it would be establishing a mischievous precedent to pass the bill in question. Its effect will be to invite repeated applications and appeals for special acts, and Congress will find itself embarrassed in the effort to produce strict and *exact equality* in every case. If the widows of all rear-admirals are to be allowed a pension of $50 per month without reference to their pecuniary circumstances or necessities, then Congress should so declare by *general law*. Special legislation in the matter of pensions is steadily increasing, and at a rate which, if precedents are to be followed and control its action, will soon be exceedingly embarrassing to Congress. It should be assumed that when Congress, with all the facts before it *now presented*, fixed Mrs. Lanman's pension at $30 per month, it intended that as its final action in the matter.

For these and other reasons that will readily suggest themselves, we think the bill should not be passed but be indefinitely postponed by the Senate.

HOWELL E. JACKSON.
JAS. H. SLATER.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 810.

# IN THE SENATE OF THE UNITED STATES.

JULY 10, 1882.—Ordered to be printed.

Mr. GARLAND, from the Committee on the Judiciary, submitted the following

# REPORT:

[To accompany bill H. R. 676.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 676) to refer the claims of the captors of the ram Albemarle to the Court of Claims, report the same back with the recommendation it do pass, without amendment, and in that connection beg leave to submit, as their report, a report made in the House of Representatives by the Committee on Naval Affairs at the present session of Congress:

This measure was fully considered by the Committee on Naval Affairs of the last House of Representatives, and a careful and elaborate report was made by that committee, and as nothing can be profitably said in explanation of said bill which is not found in that report, the same is adopted by this committee. It is as follows:

"On the night of the 27th of October, 1864, the Confederate ram Albemarle was destroyed by a torpedo-boat under the command of Lieut. Wm. B. Cushing, U. S. N. The capture and destruction of this formidable vessel was of great importance to the United States. It resulted in the speedy capture of Plymouth, N. C., with great quantities of military and naval stores. A large number of vessels of the Navy were at once relieved from blockading Albemarle Sound to prevent the ram escaping to sea and starting upon a cruise of destruction to our commerce, for which she had been especially designed and built. The ram had been completed, armed, equipped, and manned, and at the moment of destruction was ready for sea with steam up, awaiting only the favorable moment to make her escape.

"In the action with the ram the torpedo-boat was disabled and abandoned, and two of her crew were killed and eleven captured by the enemy. Lieutenant Cushing and Edward Houghton, a seaman, were the only persons who escaped death or capture.

"Active military operations followed immediately afterwards, and the condemnation of the ram as a prize was neglected and delayed until after it had been dismantled, and its armament, machinery, stores, &c., appropriated to public use. The ram was finally raised and taken to Norfolk, where an appraisal was had, and in August, 1865, the Secretary of the Navy, after deducting from the total appraisal $12,500 for salvage, deposited to the credit of the prize fund $79,944. This sum was distributed among the persons entitled thereto, under a decree of the district court of the United States for the District of Columbia, issued on the 21st day of August, 1865. A copy of the decree is annexed to this report, marked Exhibit A.

"The ram Albemarle had cost the Confederate Government at least $1,500,000, and even in a northern ship-yard, where greater facilities were attainable, would have cost more than half of that sum.

"It is, therefore, manifest that the appraisal did great injustice to the men who were engaged in the work of destroying it. To remedy this wrong Congress passed the act of April, 1872, which authorized a re-examination by the prize court, 'that the captors' might 'obtain an appraisal such as is required by the prize laws of Congress.' Under that act a reappraisal was had, and the net value of the property pertaining to the prize which had been applied to public use was found to be $282,835.80. On the 8th of January, 1873, Congress appropriated $202,912.90, the difference between the old and the new appraisal, 'to enable the Secretary of the Navy to pay to the captors of the rebel ram 'Albemarle' in accordance with the decree of the district court.'

"The decree depended upon the statutes in force at the time. The statutes in force at the date of the decree were the same which were in force at the time of the capture and which fixed the right of the captors at the moment of their victory over the ram.

"The correct application of the law is a matter of right which the captors are justified in *contending for. Men who gallantly* offer their lives in such hazardous enterprises

in their country's behalf are entitled to a correct application of the law under which they act, in the distribution of rewards.

"The following are provisions of the prize act of June, 1864, the law in force at the time of the capture, applicable to the case (chap. 174, 38th Cong., sess. 1, 1874, Stat. at Large, vol. 13, page 307, section 10):

"'The net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; when of inferior force one-half shall be decreed to the United States, and the other half to the captors. * * * All prize-money adjudged to the captors shall be distributed in the following proportions, namely:

"'First. To the commanding officer of a fleet or squadron, one-twentieth part of all prize-money awarded to any vessel or vessels under his immediate command.

"'Second. To the commanding officer of a division of a fleet or squadron, on duty under the orders of the commander-in-chief of such fleet or squadron, a sum equal to one-fiftieth part of any prize-money awarded to a vessel of such division for a capture made while under his command.

"'Third. To the fleet captain one-hundredth part of all prize-money awarded to any vessel or vessels of the fleet or squadron in which he was serving.

"'Fourth. To the *commander of a single ship*, one-tenth part of all the prize-money awarded to the ship under his command, if such ship at the time of the capture was under the command of the commanding officer of the fleet or squadron, or a division, and three-twentieths if his ship was acting independently of such superior officer.

"'Fifth. After the foregoing deductions, the residue shall be distributed and proportioned among all others doing duty on board * * * and borne upon the books of the ship in proportion to their respective rates of pay in the service.'

"These are the provisions of law, the only provisions applicable to the case, and which the court undertook to administer in making the decree of distribution.

"The court in express terms decided and decreed that the prize was of superior force to the vessel making the capture, and under the statute already cited all the prize-money belonged to the officers of the fleet and the men doing duty on the vessel making the capture.

"In the final decree of distribution made on the 11th of February, 1873, the court in effect consolidated the two appraisals, and corrected errors and omissions in the first decree. The decree is annexed, marked Exhibit B.

"The whole amount of prize-money arising from both appraisals—the consolidated net fund after the deduction of all costs—was $273,135.09.

"The court, in strict conformity with the statutes, ordered payment to the fleet officers as follows:

| | |
|---|---|
| To the commander of the squadron, $\frac{1}{20}$, or | $13,656 75 |
| To the commander of the division, $\frac{1}{50}$, or | 5,462 70 |
| To the fleet captain, $\frac{1}{100}$, or | 2,731 35 |
| | 21,850 80 |

"The court ordered 'the remainder (ascertained afterwards to be the sum of $251,284.29) to be distributed to the persons doing duty on the torpedo-launch in proportion to *their respective rates of pay in the service.*'

"Strict compliance with the terms of the decree would have distributed the fund awarded to the torpedo-boat according to the following table, which has been framed to show at a glance the true amount due to each man, the amount paid each, the errors made, and the persons entitled to share in the fund, on the assumption that the words '*rates of pay in the service*' lawfully mean '*rates of pay in the service*' at the time of the capture.

| Pay. | Name. | True amount. | Amount paid. | Excess. | Due. |
|---|---|---|---|---|---|
| $1,875 | W. B. Cushing | $56,799 37 | $56,056 27 | ..... | $743 10 |
| 1,300 | F. H. Swan | 39,380 90 | 31,102 25 | ..... | 8,278 65 |
| 1,000 | W. Stotesbury | 30,293 00 | 23,925 00 | ..... | 6,368 00 |
| 1,000 | C. L. Steever | 30,293 00 | 23,925 00 | ..... | 6,368 00 |
| 480 | W. L. Howarth | 14,540 64 | 35,887 50 | $21,346 86 | ..... |
| 480 | T. S. Gay | 14,540 64 | 28,710 00 | 14,169 36 | ..... |
| 480 | J. Woodman | 14,540 64 | 11,484 00 | ..... | 3,056 64 |
| 360 | S. Higgins | 10,905 48 | 8,613 01 | ..... | 2,292 47 |
| 240 | R. Hamilton | 7,270 32 | 5,742 01 | ..... | 1,528 31 |
| 192 | E. J. Houghton | 5,816 25 | 4,593 60 | ..... | 1,222 65 |
| 192 | B. Harley | 5,816 25 | 4,593 60 | ..... | 1,222 65 |
| 192 | W. Smith | 5,816 25 | 4,593 60 | ..... | 1,222 65 |
| 168 | R. H. King | 5,090 43 | 4,019 40 | ..... | 1,071 03 |
| 168 | H. Wilkes | 5,090 43 | 4,019 40 | ..... | 1,071 03 |
| 168 | L. Deming | 5,090 69 | 4,019 40 | ..... | 1,071 04 |
| *8,295 | | 251,284 29 | 251,284 29 | 35,516 22 | 35,516 22 |

*Ratio, $30.293 on one dollar of pay.

"The table discloses the fact that two of the men, W. L. Howarth and T. S. Gay, actually received sums aggregating $35,516.22 in excess of what they were entitled to if their 'rates of pay in the service' at the time of capture are to govern. The decree of the court was in terms strictly correct in this aspect of the case, but the Secretary of the Navy was not confined in his distribution by words in the decree showing affirmatively that the pay at the time of capture was intended by the court, and he erroneously, we think, adopted the rate of pay which these men enjoyed at the date of the decree.

"After the capture and before the distribution, Cushing, Howarth, and Gay had all been promoted for their gallant conduct in the destruction of the ram, and their commissions were made to take date on the day of the capture.

"Cushing was promoted from a lieutenant, with a salary of $1,875, to a lieutenant-commander, with $2,343 pay; Howarth was promoted from a master's mate, with $480 pay, to an acting master, with $1,500 pay; and Gay was promoted from a master's mate, with a salary of $480, to an acting ensign, with the salary of $1,200. The distribution was made among these officers upon the basis of the pay of their advanced rank. The only persons benefited by this were Howarth and Gay; all the other captors were made to suffer by it. Cushing lost, because the great increase given to Howarth and Gay reduced his share below what it would have been on his pay as a lieutenant, upon the basis of distribution according to the pay at the time of capture.

"The injustice of this mode of distribution is more manifest when we consider that Howarth, Gay, and Woodman, at the time of the capture, held the same rank of master's mates, with the same pay of $480 a year; that while Woodman was killed in the engagement, and his family received only $11,484, Howarth and Gay both survived, were honored and promoted, and received, the one $35,887.50, and the other $28,710.

"The following table shows the manner of distribution and the rate of pay of each on which the division was based:

| Name. | Rank. | Pay. | Amount paid. |
|---|---|---|---|
| W. B. Cushing | Lieutenant-commander | $2,343 | $56,056 27 |
| W. L. Howarth | Acting master | 1,500 | 35,887 50 |
| F. H. Swan | Acting assistant paymaster | 1,300 | 31,102 50 |
| Thomas L. Gay | Acting ensign | 1,200 | 28,710 00 |
| William Stotesbury | Third assistant engineer | 1,000 | 23,925 00 |
| C. L. Steever | do | 1,000 | 23,925 00 |
| John Woodman | Acting master's mate | 480 | 11,484 00 |
| Samuel Higgins | First-class fireman | 360 | 8,613 01 |
| Richard Hamilton | Coal-heaver | 240 | 5,742 01 |
| William Smith | Ordinary seaman | 192 | 4,593 60 |
| Bernard Harley | do | 192 | 4,593 60 |
| E. J. Houghton | do | 192 | 4,593 60 |
| Lorenzo Deming | Landsman | 168 | 4,019 40 |
| Henry Wilkes | do | 168 | 4,019 40 |
| R. H. King | do | 168 | 4,019 40 |
| Total | | | 251,284 29 |

"We cannot doubt that the distribution was made in violation of the law and of the spirit and intent of the decree of the court. We think that the rights of the several captors became vested at the very moment of their victory, and that no change in the rank or pay of any one of them could affect his own rights as to prize-money or the rights of any of his associates. In support of this view we quote from the opinion of the then Attorney-General of the United States, Mr. Pierrepont, which is hereto annexed, marked Exhibit C:

"'But the only terms of this provision which it is material to consider in this connection are the words, "their respective rates of pay in the service." What is meant thereby?

"'I think these words signify the rates of pay actually established and to which the parties concerned were entitled at the time of the capture of the prize. Had the condemnation and distribution in the case of the Albemarle occurred prior to the promotion of any of those who took part in the capture, it is very clear that an apportionment of the prize-proceeds among such of the captors as came under the operation of the above-mentioned provision, based upon their respective rates of pay in the service at the time of the capture, would have been in exact conformity with the rule of distribution prescribed in that provision. What would have constituted under the said provision a proper basis for an apportionment then must be deemed to be equally such under the same provision at a more remote period, whatever alteration in the condition of the captors with regard to grade or pay may have taken place in the mean time. The rule of distribution adverted is not liable to be varied, as I conceive, either to augment or diminish any of the individual interests or shares of the captors relative to each other by circumstances affecting the rank or compensation of some of the captors which may arise subsequent to the capture of the prize, or, indeed, by anything short of a legislative enactment plainly authorizing it.

"'Regarded from this point of view, the promotion of a naval officer to whom prize-money is distributable in proportion to his pay, where it has been conferred after the date of the capture of the prize, can have no effect whatever upon the distribution of the money, though by the promotion he became entitled (we will suppose) to increased pay from and including that date. The rate of pay which such officer was in receipt of when the capture was made is the measure of his allowance out of the prize proceeds, not the increased pay resulting from the promotion afterward bestowed upon him.'

"Good faith towards the officers and sailors of our Navy 'requires that they should in all cases receive their prize-money' according to the terms and in the proportions prescribed by the law under which they act.

"'The law is a conditional grant by Congress, and as soon as the conditions are fulfilled the grant becomes absolute.'

"Their 'rights are based upon antecedent facts which amount to an executed contract with the government.'

"Attorney-General Bates held that the rights of captors vest at the time of the capture. He says:

"'Their claim is a legal right, granted by act of Congress, and as the claim exists only by force of the act, it must be made and enforced according to the terms of the act.' (Opinions, vol. xi, page 102.)

"Such of the captors as have not for any cause received their full share of the prize-money have a just claim on the government unless they have lost or surrendered their claims by their own voluntary acts.

"'If accounting officers err designedly or by mistake in making payments, the loss must fall on the United States.' (Reverdy Johnson, Opinions of Attorney-General, vol. v, p. 183.)

"It is claimed that the distribution was still more radically wrong and unjust, and for another reason. By the fourth clause of section 10 of the prize law of 1864, before quoted, it is provided that the commander of a 'single ship shall be entitled to one-tenth part of all the prize-money awarded to the ship under his command, if such ship at the time of the capture was under the command of a commanding officer of the fleet or squadron, or a division.'

"It is claimed that the torpedo-boat was a *single ship* under and within the true intent of this provision. That she was acting under the command of the commander of a fleet is admitted, and the court, in their decree awarding prize-money to the officers of the squadron and giving all the rest to the vessel making the capture, give strength to the claim. The torpedo-boat left the fleet in Albemarle Sound and made its way, *in the night*, up the river *alone*, making the capture early in the morning. She was, in fact, commanded, as is universally known, by Lieut. W. B. Cushing. She was far beyond the reach or aid of any other vessel of the fleet. Her officers and crew were mostly volunteers from the various vessels of the fleet for this especial expedition and service. Upon these facts, which cannot be denied, it is claimed with much reason that she was a 'single ship,' and that being a single ship the law will presume she had a commander, and that her actual commander, Cushing, was entitled to all the rights and privileges of the commander of a single ship making capture, and no more. Should this be held to be the correct view, then Lieutenant Cushing was entitled to only one-tenth of the prize-money awarded to the torpedo-boat, and the balance should have been distributed among the others doing duty on board in proportion to their rates of pay in the service.

"The following table will show what the proportions of the prize-money of each person was under such a construction, and who have been overpaid, and how much is now due to the others:

| Pay. | Name. | True amount. | Amount paid. | Excess. | Due. |
|---|---|---|---|---|---|
| 1/3 | W. B. Cushing | $25,128 43 | $56,056 27 | $30,927 84 | ..... |
| 1,300 | F. H. Swain | 45,793 80 | 31,102 50 | ..... | $14,691 00 |
| 1,000 | W. Stotesbury | 35,226 00 | 23,925 00 | ..... | 11,301 00 |
| 1,000 | C. L. Steever | 35,226 00 | 23,925 00 | ..... | 11,301 00 |
| 480 | W. L. Howarth | 16,908 48 | 35,887 50 | 18,979 02 | ..... |
| 480 | T. S. Gay | 16,908 48 | 28,710 00 | 11,801 52 | ..... |
| 480 | J. Woodman | 16,908 48 | 11,484 00 | ..... | 5,424 48 |
| 360 | S. Higgins | 12,681 36 | 8,613 01 | ..... | 4,068 35 |
| 240 | R. Hamilton | 8,454 24 | 5,702 01 | ..... | 2,712 23 |
| 192 | E. J. Houghton | 6,763 39 | 4,593 60 | ..... | 2,169 79 |
| 192 | B. Harley | 6,763 39 | 4,593 60 | ..... | 2,169 79 |
| 192 | W. Smith | 6,763 39 | 4,593 60 | ..... | 2,169 79 |
| 168 | R. H. King | 5,919 62 | 4,019 40 | ..... | 1,900 22 |
| 168 | H. Wilkes | 5,919 62 | 4,019 40 | ..... | 1,900 22 |
| 168 | L. Deming | 5,919 61 | 4,019 40 | ..... | 1,900 21 |
| *6,420 | | 251,284 29 | 251,284 29 | 61,708 38 | 61,708 38 |

* Rates, $35.226 on $1 of pay.

"The court, by implication, may be said to have decided against this view of the subject, and yet the decree does not show, nor do we know, whether the court considered the question whether the vessel making the capture was a single ship, or whether her commander was entitled to more than one-tenth of the prize-money, nor did the court in terms declare otherwise. The various legal questions raised in this controversy should be judicially determined before any redistribution of prize-money can be made which cannot be hereafter disturbed. While your committee is fully satisfied that gross injustice has been done to some of the captors, and that the distribution was wrong upon every possible theory of sound legal construction, they do not think Congress should undertake to decide upon a case which a court could pass upon after full argument so much better and so much more satisfactorily to the captors and to the government.

"It is therefore recommended that the claimants be permitted to prosecute their claims in the Court of Claims, where the government can make any legal defense which may be open to it, and that therefore the bill accompanying this report be passed."

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## APPENDIX.

### EXHIBIT A.—*Decree of August*, 1875.

District court of the United States for the District of Columbia.

At the United States court-rooms, in the city of Washington, on the 21st day of August, A. D. 1875. Present, Andrew Wylie, justice.

| | |
|---|---|
| THE UNITED STATES *vs.* THE REBEL RAM ALBEMARLE, HER TACKLE, &C. | No. 146. In prize. Decree of distribution. |

A final decree of condemnation of the rebel ram Albermale having been duly rendered herein by the court, and it appearing, by the papers filed in court under the seal of the Navy Department, that the said rebel ram, having been taken and appropriated by the Government of the United States for the use of the United States, was appraised at the sum and value of ($79,944) seventy-nine thousand nine hundred and forty-four dollars;

And it further appearing that the aggregate sum of the costs and disbursements herein, together with the allowance made to the counsel for captors under a special stipulation filed with the papers in the case, and as the adjustment of the same, pursuant to the act of June 30, 1864, on file in the office of the clerk, is two thousand six hundred and forty-five dollars and thirty cents ($2,645.30), and that the net amount for distribution on the basis of the said adjustment is, therefore, the sum of seventy-seven thousand two hundred and ninety-eight dollars and seventy cents ($77,298.70):

It is now ordered and decreed, on the motion of the district attorney, the counsel for the captors assenting to the same, that the aforesaid net amount be deposited in the Treasury of the United States, and be distributed according to law.

And it further appearing that the papers filed in said cause under the seal of the Navy Department, and the affidavit in behalf of the captors, show what public ship is entitled to share in the said prize, and whether the said prize was of superior, equal, or inferior force to the vessel making the capture, and there being no conflicting claim: Now, therefore, it is *adjudged* and *decreed* that the prize was of superior force to the vessel making the capture, and that the whole of the residue of said valuation be paid to the captors, as follows:

One-twentieth of said residue to the officer commanding the North Atlantic blockading squadron at the time of said capture; one-hundredth part of said residue to the fleet captain of said North Atlantic blockading squadron (*three-twentieths of said residue to the officer commanding the torpedo-launch capturing said prize*),* and the remainder distributed to the other persons doing duty on board said torpedo-launch, in proportion to their respective rates of pay in the service.

By order of the court.

(Signed) A. W.

*These words in *italics* were struck out of the original draft of the decree.

EXHIBIT B.—*Decree of February* 11, 1873.

In the district court of the United States for the District of Columbia.

THE UNITED STATES
*vs.*
THE REBEL RAM ALBERMARLE. } Prize.

This cause coming on to be heard, and for final decree, the district attorney of the United States for the district of Columbia appeared for the United States, and the captors were represented by their proctors, whereupon the proceedings were read and considered; and it appearing to the court that on the first day of April, A. D. 1872, an act of Congress was approved by the President requiring the court to take up and re-examine this cause, that the captors might obtain an appraisal such as is required by the prize-laws of Congress; and that on the third day of June, A. D. 1872, Commander William B. Cushing, of the United States Navy, who commanded the expedition on board the torpedo-launch which captured the said prize, filed in this court his petition on behalf of himself and the other captors praying the order of this court for such appraisement; whereupon a board of appraisers was appointed to make such appraisement, and notice was directed to be given, and was given by public advertisement of these proceedings to all persons claiming to be interested therein, for the term of three weeks, and after the expiration thereof the said board returned their appraisement valuing the said prize at the sum of two hundred and eighty-two thousand eight hundred and fifty-six dollars and ninety cents ($282,856.90), to which report no exceptions were filed, either by the United States or the captors, and the same was, on the 9th day of July, A. D. 1872, ratified and confirmed; and that thereafter, on the 8th day of January, 1873, Congress made an appropriation to enable the Secretary of the Navy to pay the captors of the said prize the sum of two hundred and two thousand nine hundred and twelve dollars and ninety cents, being the difference between the value of the said vessel as appraised under the order of this court and the amount heretofore deposited by the Secretary of the Navy with the assistant treasurer of the United States as part of the value of said prize, which sum of two hundred and two thousand nine hundred and twelve dollars and ninety cents ($202,912.90) has been deposited with the assistant treasurer of the United States, at Washington, subject to the order of this court;

And it being further seen that on the 12th day of July, A. D. 1872, Commander Wm. H. Macomb, United States Navy, filed his petition in this court, claiming to share in the prize as commander of a division of the North Atlantic blockading squadron, and has offered evidence to prove his claim as commanding such division; and it being further seen that on the 5th day of August, 1872, William Peterkin, and on the 9th day of January, A. D. 1873, Wilson P. Burlingame, filed their petitions, by leave of the court, claiming a share in the prize, as having been part of the crew of a cutter which accompanied the torpedo-launch on the expedition to capture the prize, but was ordered back before the attack was made, but neither of said petitioners having offered any evidence to support their claim; while on the other hand, the persons doing duty on the torpedo-launch have offered evidence to prove that the said cutter was not within signal distance of the torpedo-launch at the time of the capture, nor under circumstances nor in a condition to render any aid; and at this hearing no objection is made on the part of said petitioners, Burlingame and Peterkin:

Now, therefore, it is, this eleventh day of February, A. D. 1873, ordered, adjudged, and decreed that, of the said amount of two hundred and two thousand nine hundred and twelve dollars and ninety cents ($202,912.90) there to be paid into the hands of the marshal of the District of Columbia the sum of seven thousand and seventy-six dollars and fifty-one cents ($7,076.51), to be by him paid according to the bill of costs taxed and allowed by this court, and that the residue of said sum so as aforesaid appropriated, to wit, the sum of one hundred and ninety-five thousand eight hundred and thirty-six dollars and thirty-nine cents ($195,836.39) be deposited in the Treasury of the United States, to be distributed as follows, that is to say: one-twentieth part thereof to the officer commanding the North Atlantic blockading squadron, one hundredth part thereof to the fleet captain of the said blockading squadron, one-fiftieth part thereof to the officer commanding that division of the said squadron called the Division of the Sounds of North Carolina, together with the further sum of fifteen hundred and forty-five dollars and ninety cents ($1,545.90), being one-fiftieth part of the sum heretofore decreed by this court to be distributed; and that the remainder be distributed to the persons doing duty on the torpedo-launch in proportion to their respective rates of pay in the service.

(Signed) D. C. HUMPHREYS,
*Justice.*

Filed Feb'y 11, 1873.

EXHIBIT C.—*Opinion of the Attorney-General.*

DEPARTMENT OF JUSTICE,
*Washington, December* 10, 1875.

Hon. GEORGE M. ROBESON,
*Secretary of the Navy:*

SIR: Your letter of the 9th of June last, in relation to the distribution that has already been made of the prize-money adjudged to the captors of the rebel ram Albemarle, submits for my consideration the following questions, which have arisen since such distribution, namely:

1st. Were our Navy officers in October, 1864, who were promoted to take rank on a certain day then past, entitled to the pay of the promoted rank, provided they were doing duty in such rank? If so, are officers who are entitled to prize-money in proportion to their pay so entitled in proportion to the pay of the increased rank?

2d. Is the commander of a single ship limited to one-tenth of all the prize-money awarded to his ship, if the amount to which he would be entitled, if paid according to his rank, exceeded such one-tenth?

3d. Is picket-boat No. 1, as at the time of the destruction of the Albemarle, to be considered, either in fact or under the decree of the court, a "single ship," under the command of a commanding officer of a fleet or squadron?

The first question contains two distinct branches, which it is thought expedient to deal with here in their inverse order. The answer to the latter of these branches depends upon the meaning and effect of the statutory provision requiring a certain portion of the proceeds of a prize to be distributed "among all others doing duty on board, * * * and borne upon the books of the ship, in proportion to their respective rates of pay in the service." (See prize law of 1864, 13 Statutes, p. 310.) But the only terms of this provision which it is material to consider in this connection are the words "their respective rates of pay in the service." What is meant thereby?

I think these words signify the rates of pay actually established and to which the parties concerned were entitled *at the time of the capture of the prize.* Had the condemnation and distribution in the case of the Albemarle occurred prior to the promotion of any of those who took part in the capture, it is very clear that an apportionment of the prize proceeds among such of the captors as came under the operation of the above-mentioned provision, based upon their respective rates of pay in the service *at the time of the capture*, would have been in exact conformity with the rule of distribution prescribed in that provision. What would have constituted under the said provision a proper basis for an apportionment *then*, must be deemed to be equally such under the same provision at a more remote period, whatever alteration in the condition of the captors with regard to grade or pay may have taken place in the mean time. The rule of distribution adverted to is not liable to be varied, as I conceive, either to augment or diminish any of the individual interests or shares of the captors relative to each other, by circumstances affecting the rank or compensation of some of the captors which may arise subsequent to the capture of the prize, or, indeed, by anything short of a legislative enactment plainly authorizing it.

Regarded from this point of view, the promotion of a naval officer to whom prize-money is distributable in proportion to his pay, where it has been conferred after the date of the capture of the prize, can have no effect whatever upon the distribution of the money, though by the promotion he became entitled (we will suppose) to increased pay from and including that date. The rate of pay which such officer was in receipt of *when the capture was made* is the measure of his allowance out of the prize proceeds, not the increased pay resulting from the promotion afterward bestowed upon him.

Accordingly, the latter branch of your first question is answered in the negative, and it is presumed that this answer renders unnecessary any response to the other branch of the same question.

Answering your second question in the same general terms in which it is stated, I say, yes. The prize-law above cited gives to the "commander of a single ship," under some circumstances, *one-tenth*, and under others *three-twentieths* of the prize-money awarded to his vessel, and there being no other provision made for him out of the prize-money so awarded, he is of necessity restricted to the one-tenth or the three-twentieths, as the case may be. He cannot, therefore, share "according to his rank" when that would give him more than the proportion just mentioned.

Your third inquiry appears to involve two questions: 1st. Whether "picket-boat No. 1" was at the time of the capture a "single ship" within the meaning of the provision of the prize-law just referred to. 2d. Whether it was then under the command of a commanding officer of a fleet or squadron. The latter of these is purely a question of fact, and as such inappropriate for the consideration of the Attorney-General. Its solution may be readily had, I imagine, by reference to the records of the Navy Department. With respect to the former, the papers submitted do not contain sufficient information to enable me to reach a satisfactory conclusion on the

subject. By the decree of the court the prize was awarded solely to the vessel mentioned, but this determines nothing in relation to the real point presented, which is whether the vessel should be considered a "ship" or not under the provisions of the prize-law to which reference is above made. This point seems to require for its intelligent consideration something more definite and specific touching the description of the boat, its size, character, complement of officers and men, &c., than is found in the papers before me. The papers received with your letter are herewith returned.

I have the honor to be, very respectfully, your obedient servant,

(Signed) EDWARDS PIERREPONT.

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EXHIBIT D.

TREASURY DEPARTMENT.

Be it remembered that S. J. W. Tabor, esq., who certified the annexed papers, is now, and was at the time of doing so, Fourth Auditor of the Treasury, and that full faith and credit are due to his official attestations.

In testimony whereof I, Chas. F. Conant, Acting Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this department, at the city of Washington, this 1st day of February, in the year of our Lord 1877.

[SEAL.]

CHAS. F. CONANT,
*Acting Secretary of the Treasury.*

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TREASURY DEPARTMENT,
*Fourth Auditor's Office, Nov. 3d*, 1865.

SIR: On the 5th of October last an order was received from you to change the rank of Wm. L. Howarth, on the prize-list of the "picket-boat" for destruction of the Albemarle, from acting ensign to acting master, and pay him accordingly. This was done. Subsequently, on the 12th of October, you issued an order for a new distribution of said prize, which materially changed the shares of the captors. Acting Mas. Howarth had already been paid his shares of the prize under the first distribution, with the additional which the change from acting ensign to acting master gave him. This difference gave him an overplus of $1,821.36 to which he was not entitled, but had nevertheless been paid by your order as above stated. He was at once ordered to return the amount stated, but as yet nothing has been heard from him. If he is still in the service and subject to orders from your department, I would suggest that you take such a course as will immediately reimburse the government in the amount referred to.

I am, sir, very respectfully, your obedient servant,

W. A. CROMWELL,
*Acting Auditor.*

Hon. GIDEON WELLS,
*Sec'y of the Navy.*

A true copy.

S. J. W. TABOR,
*Auditor.*

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U. S. SHIP CONSTELLATION,
*Annapolis, Md., Jan. 20th*, 1873.

SIR: I would respectfully state that in the first distribution of prize-money for the destruction of the rebel ram Albemarle, certain officers received their share thereof from the date of their promotion as a reward for gallant service in said destruction.

I was promoted from the same date, October 27th, 1864, and in the distribution about to be made I would respectfully ask that I may be allowed my share thereof according to the rank and pay of acting ensign instead of master's mate. The records of the department will show that my statements are correct.

Very respectfully, your ob't serv't,

THOMAS S. GAY,
*Sailmaker, U. S. N., Late Act. Ensign.*

Hon. S. J. W. TABOR,
*4th Auditor of the Treasury, Washington, D. C.*

A true copy.

S. J. W. TABOR,
*Auditor.*

TREASURY DEPARTMENT,
*Fourth Auditor's Office, January 25, 1873.*

SIR: Enclosed I transmit the statement of Sailmaker Thomas S. Gay, which is correct. Commander W. B. Cushing received his share of the prize as a lieut. comd'r at a salary of $2,343.00, though at the time of capture his actual pay was that of a lieutenant. Acting Ensign W. L. Howarth received his share thereof as an acting master with a salary of $1,500.00, when his actual pay was $1,200.00.

Under the department's letter of April 3d, 1872, Mr. Gay, with the others, would seem to be entitled to his share of said prize as an acting ensign.

I would also ask the department whether, under the law of June 30, 1864, Commander Cushing would be considered as an officer in command of a single ship, and as such, entitled to his share of said prize, according to the fourth provision of the tenth section of said act.

I am, sir, very respectfully,
(Signed) STEPHEN J. W. TABOR,
*Auditor.*

Hon. GEO. M. ROBESON,
*Secretary of the Navy.*

A true copy.

_____,
*Auditor.*

---

TREASURY DEPARTMENT,
*Fourth Auditor's Office, February 21st, 1874.*

Hon. GEO. M. ROBESON,
*Secretary of the Navy:*

SIR: The facts in the case of the distribution of the bounty awarded for the destruction of the ram Albemarle, called for by endorsement upon a communication from Jas. Fullerton, referred by you to this office on the 19th inst., are as follows:

The first distribution was made under an order from the Secretary of the Navy, dated Aug. 28th, 1865, a copy of which is herewith enclosed marked "A." It will be observed that the order requires distribution to be made "in accordance with the decree transmitted, which decree provided that the money should" be paid to the captors as follows: "One-twentieth to the officer commanding the North Atlantic blockading squadron at the time of said capture; hundredth part to the fleet-captain of the said North Atlantic blockading squadron, and the remainder distributed to the persons doing duty on board said torpedo-launch in the proportion to their respective rates of pay in the service." The list accompanying the order was prepared in the usual form signed by Paymr. F. H. Swan, and approved by Lt. Comdr. W. B. Cushing. The name of W. B. Cushing appeared thereon with the rank of lieutenant-commander, W. L. Howarth as act. ensign, and T. S. Gay as m. mate; each received his share according to the rate of pay attached to the rank given upon the list. In the following month of October a letter was addressed to me by the Secretary of the Navy (copy enclosed marked "B"), upon the receipt of which an order was issued to check against the pay of Lt. Comdr. Cushing the sum of $2,840.12, on account of the excess of bounty-money allowed for the destruction of the Albemarle.

This amount was repaid to him March 28th, 1867, upon claim presented in due form, supported by a letter of the Secretary of the Navy (copy enclosed marked "C"). The question of the rank of the three officers mentioned was again raised at the time of the second award, and was referred to the Hon. Secretary of the Navy for his decision. A copy of his letter, fixing the rank and pay to be recognized in the distribution, is enclosed marked "D." The decree of court in this case contained the same instructions quoted from the first in this letter, with the addition of the following clause inserted after the words "fleet-captain, &c.": "One-fiftieth part thereof to the officer commanding the division of the said squadron called the Division of the Sound of North Carolina, together with the further sum of fifteen hundred and forty-five dollars and ninety cents ($1,545.90), being one-fiftieth part of the sum heretofore decreed by this court to be distributed." The distribution was made in strict accordance with the above-mentioned orders, and payment has been made to all persons entitled to share, or their legal representatives.

The communication of Mr. Fullerton is herewith returned.

Very respectfully, your ob't servant,
STEPHEN J. W. TABOR,
*Auditor.*

A true copy.

S. J. W. TABOR,
*Auditor.*

NAVY DEPARTMENT, *October* 5, 1865.

SIR: Please place the name of Wm. L. Howarth upon the prize-list for the destruction of the ram Albemarle, to rank as acting master instead of acting ensign.

Very respectfully,

G. WELLES,
*Secretary of the Navy.*

S. J. W. TABOR, Esq.,
*Fourth Auditor.*

A true copy.

S. J. W. TABOR,
*Auditor.*

TREASURY DEPARTMENT, FOURTH AUDITOR'S OFFICE,
*March* 9, 1876.

Hon. GEO. M. ROBESON,
*Secretary of the Navy:*

SIR: The papers relating to the destruction of the ram Albemarle, transmitted with your letter of the 11th ulto., have been received and filed in this office. In acknowledging the receipt thereof I take the opportunity to restate the facts submitted in a former letter as to the manner of distributing this award.

The first distribution was made under an order from the Secretary of the Navy, dated Aug. 28, 1865, directing me to distribute the money "in accordance with the decree transmitted." The court, in the decree referred to, prescribed the mode of distribution in specific terms as follows: "One-twentieth to the officer commanding the North Atlantic blockading squadron at the time of said capture; one-hundredth part to the fleet-captain of the said North Atlantic blockading squadron, and the remainder distributed to the persons doing duty on board said torpedo-launch in proportion to their respective rates of pay in the service."

The list of persons entitled to share, accompanying the order, was prepared in the usual form, signed by Paymr. F. H. Swan, and approved by Lieut. Comdr. W. B. Cushing, and each person was allowed to sharing according to the rate of pay attached to the rank given upon this list.

The second distribution was made February 27, 1873. The decree of the court in this case contained the same instructions as quoted from the first in this letter, with the addition of the following clause appearing after the words "fleet-captain, &c.": "One-fiftieth part thereof to the officer commanding the division of the said squadron called the Division of the Sounds of North Carolina, together with the further sum of fifteen hundred and forty-five dollars and ninety cents ($1,545.90), being one-fiftieth part of the sum heretofore decreed by this court to be distributed." Distribution was made as before in strict accordance to the decree and orders of the Secretary of the Navy.

The respective rates of pay of Messrs. Cushing, Howarth, and Gay were fixed in this instance by direct instructions from the Secretary of the Navy. The question having been raised whether the torpedo-launch was at the time of this capture a "single ship," within the meaning of the prize-law of June 30th, 1864, I have to say that it does not appear to have been so recognized by the court in the decree referred to, and that the prize-list and records of this office show that these persons were attached to and borne upon the rolls of other vessels or station, and continued so attached until regularly transferred at subsequent periods. I will say, further, that in my judgment the distribution was in all respects just and fair and in conformity with the intent of the law of Congress authorizing the award.

Should a redistribution be determined upon, the money required would have to be appropriated by act of Congress, for the reason that the entire amount awarded has been paid to the captors or their legal representatives.

S. J. W. TABOR, *Auditor.*

A true copy.

S. J. W. TABOR, *Auditor.*

NEW YORK, *May* 11, 1865.

SIR: Inclosed please find a list of the officers and men composing the expedition which destroyed the rebel ram Albemarle:

| | |
|---|---|
| * { Lieut. Commdr. Lieut. W. B. Cushing, commanding | Monticello. |
| A. A. Paym'r Francis H. Swan | Otsego. |
| Act. Ensign Wm. L. Howarth. | |

*In the original list the word "Lieutenant" has been struck out and the words "Lieut. Commdr." written over it in a handwriting different from that of the body of the list.

Act. Master's Mate John Woodman ..... Commodore Hull.
Act. Master's Mate Thos. S. Gay ..... Otsego.
Act. Third Assistant Engineer Wm. Stotesbury ..... Picket-boat.
Act. Third Assistant Engineer Chas. L. Steever ..... Otsego
Sam' lHiggins, first-class fireman ..... Picket-boat.
Richard Hamilton, coal-heaver ..... Shamrock.
Wm. Smith, ordinary seaman ..... Shickopee.
Bernard Harley, ordinary seaman ..... Chickopee.
Edw. J. Haughton, ordinary seaman ..... Chickopee.
Lorenzo Denning, landsman ..... Picket-boat.
Henry Wilkes, landsman ..... Picket-boat.
Robt. H. King, landsman ..... Picket-boat.

Very respectfully, your obedient servant,

FRANCIS H. SWAN,
*Assistant Paymaster, United States Navy.*

To Hon. GIDEON WELLES,
*Secretary of the Navy, Washington, D. C.*

Approved:
W. P. CUSHING,
*Lieut. Comm'd'r.*

A true copy of the original list accompanying the order of the Secretary of the Navy for distribution, dated August 28, 1865.

S. J. W. TABOR, *Auditor.*

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NAVY DEPARTMENT,
*Washington, August* 28, 1865.

SIR: Inclosed herewith is prize-list for the sinking of the ram Albemarle, October 27, 1864.

The amount for distribution in the case is $77,298.70; the flag officer, D. D. Porter, and the fleet captain, K. R. Breese.

Transmitted also is the decree in accordance with which distribution will be made, and which you will please return.

Please proceed with the distribution.

Very respectfully,

G. WELLES,
*Secretary of the Navy.*

Hon. S. J. W. TABOR,
*Fourth Auditor.*

A true copy.

S. J. W. TABOR, *Auditor.*

---

B.

NAVY DEPARTMENT,
*Washington, October* 12, 1865.

SIR: The rank of Lieutenant-Commander Cushing should be lieutenant, and that of Acting Master Wm. L. Howarth should be acting ensign, upon the prize-list of the picket-launch for the destruction of the rebel ram Albemarle.

Please make correction and distribution accordingly.

Very respectfully,

G. WELLES,
*Secretary of the Navy.*

Hon. S. J. W. TABOR,
*Fourth Auditor.*

A true copy.

S. J. W. TABOR, *Auditor.*

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C.

NAVY DEPARTMENT,
*Washington, March* 28, 1867.

SIR: In conformity with the decision under an opinion of the Attorney-General in the case of Surgeon Wheelwright, referred to in a letter from the Fourth Auditor of this department, July 9, 1855, and with the practice in similar cases subsequently, Lieut. Comdr. Wm. B. Cushing was entitled to the pay of his grade from the date of his rank, October 27, 1874, at which time he held a command appropriate to the grade, and having received the pay, he is entitled by law to prize-money as of that grade in case of the Albemarle.

The order to him to refund a supposed overpayment having been inadvertently issued, his pay should be allowed him in the same currency in which he would have received it had it not been checked.

Very respectfully,

G. WELLES,
*Secretary of the Navy.*

Hon. S. J. W. TABOR,
*Fourth Auditor Treasury Department.*

A true copy.

S. J. W. TABOR, *Auditor.*

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WASHINGTON, *February* 25, 1873.

SIR: In reply to your letter relating to the method of distribution of the award to the captors of the Albemarle, you are informed that, on a careful review of all the laws, orders, and papers in the case, I am unable to see any legal ground for distinction between the cases of Lieutenant-Commander Cushing and Messrs. Howarth and Gay, and am therefore of opinion that the same principles of payment should apply to all these officers. If it were entirely a new question, I would have great doubt as to whether either of them is entitled to the pay of the higher rank claimed; but as the question has been in principle decided in the case of Lieutenant-Commander Cushing, I am willing to let the matter rest as I find it, though clearly of opinion, especially since the repeal of the law giving higher pay for higher grade of duty, that there is no foundation, either in law or fact, for any distinction between his case and the others. They should all be paid on the same principles governing in Commander Cushing's case.

Very respectfully,

GEO. M. ROBESON,
*Secretary of the Navy.*

Hon. S. J. W. TABOR,
*Fourth Auditor.*

A true copy.

S. J. W. TABOR,
*Auditor.*

*Statement showing names of all persons allowed to share in prize-money awarded for the destruction of the ram Albemarle, amount paid to each, and date of certificate issued by Fourth Auditor for payment.*

| Name. | Rank. | Amount allowed in first distribution, 1865. | Date certificate was issued. | Amount allowed in second distribution, 1873. | Date when certificate was issued. |
|---|---|---|---|---|---|
| D. D. Porter | Flag officer | $3,864 93 | Sept. 2, 1865 | $9,791 82 | Feb. 28, 1873 |
| K. R. Breese | Fleet captain | 772 98 | Sept. 11, 1865 | 1,958 37 | Feb. 28, 1873 |
| W. H. Macomb (deceased) | Division commander | Nothing. | | 5,462 70 | Mar. 3, 1873 |
| William B. Cushing | Lieutenant commander. | 17,952 58 | Sept. 28, 1865 | 38,103 69 | Feb. 27, 1873 |
| William L. Howarth | Acting master | 11,493 33 | Sept. 28, 1865 | 24,394 17 | Feb. 27, 1873 |
| F. H. Swan | Acting assistant paymaster. | 10,477 97 | Oct. 26, 1865 | 20,624 53 | Feb. 28, 1873 |
| Thomas S. Gay | Acting ensign | 3,868 81 | Oct. 12, 1865 | 24,841 19 | Feb. 27, 1873 |
| William Stotesbury (deceased) | Third assistant engineer. | 8,060 00 | Oct. 20, 1865 | 15,865 00 | Feb. 28, 1873 |
| Charles L. Seever | ....do | 8,060 00 | Nov. 8, 1865 | 15,865 00 | Feb. 28, 1873 |
| John Woodman (deceased) | Acting master's mate | 3,868 81 | Oct. 16, 1866 | 7,615 19 | Feb. 28, 1873 |
| Samuel Higgins (deceased) | First-class fireman | 2,901 50 | Feb. 15, 1873 | 5,711 51 | Feb. 28, 1873 |
| Richard Hamilton | Coal-heaver | 1,934 41 | Oct. 20, 1865 | 3,807 60 | Feb. 28, 1873 |
| William Smith | Ordinary seaman | 1,547 53 | Jan. 3, 1866 | 3,046 07 | Mar. 26, 1873 |
| Bernard Harley | ....do | 1,547 53 | Oct. 20, 1865 | 3,046 07 | Oct. 20, 1868 |
| Edward J. Houghton (deceased) | ....do | 1,547 53 | Jan. 30, 1866 | 3,046 07 | Mar. 17, 1873 |
| Lorenzo Deming (deceased) | Landsman | 1,354 09 | Mar. 16, 1866 | 2,665 31 | May 19, 1873 |
| Henry Wilkes | ....do | 1,354 09 | Oct. 27, 1865 | 2,665 31 | Mar. 12, 1873 |
| Robert H. King (deceased) | ....do | 1,354 09 | Nov. 2, 1865 | 2,665 31 | Apr. 16, 1873 |

Respectfully submitted.

STEPHEN J. W. TABOR,
*Auditor.*

TREASURY DEPARTMENT,
*Fourth Auditor's Office, January 30, 1877.*

E.

NAVY DEPARTMENT,
*Washington, April 24, 1877.*

SIR: Your letter of the 3d instant has been received, and its contents and subject-matter very carefully considered.

It seems to me that your clients' case is a meritorious one, and I regret that I have not the power to comply with your request in their behalf. As the Albemarle prize-fund has been fully distributed, and as there is no other fund which I can lawfully order to be applied to the payment of the captors of the Albemarle, whom you represent, it seems to me that they must look to Congress for the relief to which they seem to be entitled.

Very respectfully,

R. W. THOMPSON,
*Secretary of the Navy.*

JAMES FULLERTON, Esq.,
*Washington, D. C.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 811.

# IN THE SENATE OF THE UNITED STATES.

JULY 10, 1882.—Ordered to be printed.

Mr. ROLLINS, from the Committee on the District of Columbia, submitted the following

# REPORT:

[To accompany bills H. R. 1768 and S. 1913.]

*The Committee on the District of Columbia, to whom were referred the bills (H. R. 1768 and S. 1913) for the relief of William Bowen, have considered the same, and respectfully report:*

That on November 15, 1872, William Bowen, a colored man, made a proposition to the board of health of the District of Columbia to fill all lots below grade in the District without expense to the board of health, said Bowen expecting to receive his compensation in the shape of tax liens on the property improved. The board of health accepted this proposition, and on July 18, 1873, William Bowen received from said board a schedule of lots having stagnant water upon them, which they desired him to fill, under the direction of the surveyor of the District. Bowen did this work, as ordered, and the District surveyor certified that it was properly done. By his report it is shown that Bowen hauled and deposited several thousand cubic yards of earth, for which he charged 65 and 67 cents per cubic yard, and the assessor of the District assessed the property at that rate to pay for the work. R. W. McPherson, for R. T. Meehan, appealed to the District Commissioners to be relieved from the payment of this tax, being the owner of a portion of the property improved by Bowen, and the petition was referred to the District attorney, who made an elaborate opinion, in which he sets forth that in making the agreement with Bowen the board of health acted entirely without authority of law; that the District assessor had no right to assess these taxes, and that owners of property could not be compelled to pay for the abatement of nuisances unless it was shown that they caused the nuisances. The District attorney decided the assessments to be erroneous and void, and none of them were collected.

In 1875 William Bowen came to Congress for relief, and a clause was inserted in the deficiency appropriation bill, approved March 3, 1875, authorizing the board of audit to reopen the case, and pay William Bowen such amount as, in their judgment, was due him for this work. The board of audit examined the claim, reported that, in their judgment, Bowen's charge of 67 cents per cubic yard was excessive, and recommended an allowance of 35 cents per cubic yard, which, they state, was the price usually paid. Bowen's original claim was $5,213.38; the amount allowed by the board of audit, at a rate of 35 cents per cubic yard, was $1,463.58. Bowen, it seems, accepted this adjustment, and signed a receipt for this amount in full settlement for all claims against the District for this work.

Notwithstanding this receipt, which is on file in the office of the Commissioners of the District of Columbia, Bowen makes an assignment of his claim for the balance of his original charge, amounting to $3,749.80, to the Freedman's Savings and Trust Company, with the understanding that he shall prosecute said claim before Congress.

It is claimed by Bowen that the receipt given by him was given "under protest;" but this fact does not appear on the receipt.

It appears that no contract or agreement as to the price per yard for the filling of said lots was ever made or named, either by Bowen in his proposition or by the board of health in accepting it; but in rendering the bills for the work done, Bowen seems to have charged, and the taxes were at first levied upon the lots therefor, at a price which the board of audit afterwards reported was excessive, and nearly double the price usually paid for similar work.

Whether the proposition of Bowen made to the board of health, that his compensation should alone be derived from the levying of a tax therefor against the lots, was the result of legal advice which he had taken and which proved to be erroneous, or whether he acted upon his own responsibility, your committee are not advised; but it would appear that in making the proposition he took some chances, in a legal sense, entirely voluntary upon his part, and which is now the source of his complaint.

Your committee, therefore, in view of the above complications of law and fact, desiring to secure for the claimant full justice and such relief as he may prove himself entitled to in law or equity, believe that it can only be secured by a proper adjudication of the claim in all its bearings, and therefore recommend the passage of the accompanying bill as a substitute for bills H. R. 1768 and S. 1913 under consideration.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 812.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2481.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2481) granting a pension to Dicey Babbitt, having carefully examined the same, make the following report:*

That the Committee on Pensions, House of Representatives, have at this session passed a bill granting a pension to Dicey Babbitt. The case was rejected at the Pension Office on the grounds "that there is no record or other evidence of the service of the soldier as alleged."

It appears from the evidence submitted in the case, that Dicey Babbitt is eighty-nine years old, and the lawful widow of Robert Babbitt, who was a soldier in the war of 1812 for a period of two years. It would appear by the affidavits filed in this case that Robert Babbitt enlisted in the company of Virginia militia, commanded by Capt. Benjamin Cooley, in the month of September, 1812, and served until the close of the war; that he died on the 23d of September, 1864. To establish these facts, numerous affidavits are on file in the case made by affiants who were cognizant of the enlistment and service of said Robert Babbitt, being personally acquainted with the facts, and fellow-residents in 1812. The Pension Office say that they have no information of such an organization as Captain Cooley's Company. The following letter from the adjutant-general's office of Virginia probably explains the absence of the records of this company:

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE ADJUTANT-GENERAL,
*Richmond, Va., January* 31, 1881,

DEAR SIR: I received this morning yours of the 27th inst. inquiring if the rolls of Capt. Benjamin Cooley, war of 1812, are in this office, and regret to have to reply that, owing to a fire that destroyed the office and its entire contents in 1865, there remains no roll or record of that war.

Very respectfully,

JAMES McDONALD,
*Adjutant-General.*

A. N. McGURDLEY, Esq.,
*Moberly, Mo.*

Your committee think Dicey Babbitt is entitled to a pension as the widow of Robert Babbitt, and therefore report the bill back with a recommendation that it pass.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 813.

# IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 703.]

*The Committee on Pensions, to whom was referred the bill (S. 703) granting a pension to Sarah Shea, widow of William Shea, late a private in Company A, Second Regiment United States Maryland Volunteers, report:*

That the case was not decided by the Commissioner of Pensions because of incomplete proof of marriage. The proof already furnished shows that the pastor who married them is deceased; that no person can be found who was present at the marriage, but that they cohabited many years and were recognized as man and wife; that one or more children were baptized.

There is no doubt that William Shea died in the service.

Committee recommend passage of bill.

○

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 814.

## IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1884.]

*The Committee on Pensions, to whom was referred the bill* (S. 1884) *granting a pension to William I. Daly, have considered the same, and report:*

That the bill proposes to grant a captain's pension to the said Daly, who, it is alleged in a memorial laid before your committee, and purporting to be signed by several gentlemen who have occupied prominent civil or military positions, and in an affidavit made by said Daly, was wounded while serving as chief of scouts in the Army of the Northwest under Major-General Pope, and is still suffering disability in consequence of such wounds.

Two physicians also furnish an unsworn statement that he is disabled in consequence of a gunshot wound and of exposure.

Your committee do not think that the character of evidence by which this case is attempted to be supported would justify them in recommending favorable action, even if the case were free from other difficulties, and they therefore recommend that the bill referred to them do not pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 815.

# IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1439.]

*The Committee on Pensions, to whom was referred the bill (S. 1439) granting a pension to Lydia Smith, have had the same under consideration, and report:*

That Lydia Smith is the widow of Hosea Smith, who, it is claimed, was a soldier in Capt. Samuel L. Hughs' company, Connecticut Militia, in the war of 1812. The widow's claim for pension was rejected on the ground that it did not appear that the services of the soldier were rendered as claimed. The Third Auditor of the Treasury certifies that the name of Hosea Smith is not borne on the rolls of the company of Samuel L. Hughs. There is no evidence adduced, to overcome the want of official evidence, by any of the soldier's comrades of Captain Hughs' company; but Elijah Barrows, who affixes his signature to his affidavit by his mark, says:

> That he was in the service of the United States in the war of 1812; that he was in Captain Tilden's company, and is now a pensioner of the United States for said service; that he was acquainted with some of the soldiers of Capt. Samuel L. Hughs' company; that among others he remembers Hosea Smith of said Hughs' company, more particularly for the reason that said Smith resided not far from my home; that both before he entered the service and after his discharge his name was perfectly familiar to me from acquaintance with him, and that I knew him to be in the service in the war of 1812.

Some other evidence is adduced of the statements of the soldier respecting incidents of his service occurring at Stonington.

The widow testifies:

> That the captain of the company under whom Hosea Smith served was Capt. Samuel L. Hughs; that the said Lydia Smith makes this statement for the reason that Nathan Preston was in the same company with her husband, and from information derived from Reuben Preston, a brother of the said Nathan Preston, deceased, who actually remembers that the captain or lieutenant of the company in which said Nathan Preston served was Samuel L. Hughs; that one of the sergeants of the militia company in the town of Ashford was drafted; that the other three sergeants agreed to take their turns of fifteen days each to make the sixty days for which time the draft was made; that one of the sergeants, Job Pettis, afterwards declined to take his turn as agreed, and Nathan Preston, the first sergeant, served thirty days; that Hosea Smith served his allotment of fifteen days as stated in the original declaration; * * * that from all the information attainable she has no doubt that Hosea Smith's captain was Samuel L. Hughs, deceased.

From all the facts, your committee conclude that the evidence is too vague and uncertain to warrant favorable action, and therefore recommend that the bill be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 816.

# IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. SLATER, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1873.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1873) for the relief of Patrick Sulivan, have had the same under consideration, and report:*

That Sulivan was a corporal in Company K, Eighty-second Illinois Volunteers, was wounded at Chancellorsville, and by reason thereof his left leg was amputated at upper third; contracted, also, inguinal hernia. Was pensioned August 25, 1863, at $8 per month. Increased to $15 per month June 6, 1866, and again increased to $18 per month from June 4, 1874. Applied for further increase, which was rejected January 27, 1881, and he now applies to Congress to grant him an increase by special act.

The only evidence bearing upon the subject of increase is the report of the board of examining surgeons, of Washington City, made January 12, 1881, in which they say:

> The left leg has been amputated at upper third. Total, third grade. Has left inguinal hernia of medium size, reducible, retained by his truss with little difficulty. Total. He is not "incapacitated for performing any manual labor."

No additional evidence has been filed.

The House committee say in their report:

> The petitioner has appeared before this committee, and an examination of the amputated limb "shows that he suffered amputation in the upper third of the left leg, leaving a short stump, which, owing to muscular contraction, is constantly and strongly flexed, and cannot therefore have any artificial limb adapted to it in the usual manner, but the weight of the body in standing rests upon the flexed knee and stump, causing painful irritation and excoriation of the parts." His limb is consequently in even a worse condition than if the limb had been amputated above the knee.

Your committee, after full consideration of all the facts, are of opinion that this soldier ought to have an increase to twenty-four dollars per month and therefore recommend that the bill be amended by striking out "twenty-eight" in line 5, and also strike out all after "Infantry" in 6 and 7, and when so amended your committee recommend that the bill do pass.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 817.

# IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1102.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1102) granting a pension to Elizabeth T. Dubois, having examined the same, respectfully report:*

The following report of the House committee shows the facts in the case:

It appears from the evidence in the case in the Pension Office that the petitioner is the widow of T. B. Dubois, late an acting volunteer lieutenant-commander in the United States Navy, who served as follows:

"October 28, 1861, appointed an acting master and ordered to report to Flag-Officer Goldsborough; commanded the Albatross; June 5, 1863, promoted for gallant conduct in battle to acting volunteer lieutenant, still commanding Albatross.

"November 26, 1864, promoted to acting volunteer lieutenant-commander.

"April 21, 1865, detached by Acting Rear-Admiral Thatcher, commanding West Gulf Squadron, and ordered to duty in saving public property from the Milwaukee and Osage, which were sunk by torpedoes in Mobile Bay.

"October 7, 1865, detached and granted leave of absence.

"February 6, 1866, he was honorably discharged, and died December 13, 1874, at Kings County Lunatic Asylum, New York."

Fleet Capt. E. Simpson, United States Navy, writes to the deceased officer, under date of October 14, 1865:

"Your satisfactory reports about the Althea and Osage are at hand, and orders have been sent for a batch of engineers to report to you for duty on board the Osage; this is on the supposition that you will be able to take command of the vessel that you, and you alone, have rescued from her watery grave. Your orders have not been sent, because I desire the authority of your surgeon before I order you to the trying duty. When the Tritonia returns here I expect her to bring your report as to your physical efficiency, when your orders will be issued."

Admiral H. K. Thatcher, under date of August 10, 1865, writes:

"Your services at Mobile are fully appreciated by me, and will be duly represented to the department."

And again, August 11, 1865:

"You have satisfied yourself that the Osage is your own, and I heartily congratulate you on your success."

The widow's application for pension was filed December 13, 1874, alleging "that in 1865 Capt. Theodore B. Dubois (her husband) fell through the hatchway of the Osage, then lying in Mobile Bay, and that he then broke three of his ribs, and, as has since been shown, injured his brain, and shattered permanently his previously healthful and remarkably vigorous system. That a short time after his accident he apparently regained his health and vigor. During the year in which he resigned from the naval service he secured a half interest in the ship Minetauka, believing himself to be still able to command a vessel. This venture, because of his trouble, which was growing upon him at that time, became a total loss." The petitioner cites other cases of a similar nature, and adduces a number of responsible and reliable witnesses in support of her declaration.

The "brief" in the Pension Office in the case shows that the examiner in the office had allowed the claim at $30 per month, commencing December 13, 1874, the date of officer's death, and $2 per month additional for each child. This seems to have been afterwards changed, and the word "admitted" struck out and "reject" written over it. Under cause of death, "softening of the brain," is written "rejected by medical division *January 31, 1876,*" and the rejection affirmed by board of appeal.

Dr. R. Lautenbach swears that he was "an acting volunteer assistant surgeon during 1865, and was stationed at Mobile, and while so acting was acquainted with Theodore B. Dubois, who was injured during said year while engaged in raising the Osage, and while suffering from said injuries witness treated him as follows: "At his quarters on the eastern shore of Mobile, Ala., for a fracture of ribs, contusion, and shock, received while raising the monitor Osage. The injury was received between September and October, 1865. The quarters might be called a hospital, as I established a hospital in a house adjoining his quarters. This hospital was kept in operation until Captain Dubois was convalescent, when the sailors were transferred to their respective vessels. Captain Dubois was sound in body prior to the injury, and was often visited by Admiral Thatcher and Capt. E. Simpson."

Surgeon-General reports Dr. Lautenbach "was on duty as stated in his affidavit, but the sick-reports for third quarter 1865 are not on file."

Capt. E. Simpson, U. S. N., swears that "Captain Dubois was employed in raising vessels in Mobile Bay in 1865, and saved a large amount of property for the United States Government. While so employed he had a very severe fall, which resulted in some ribs being broken and other injuries. Captain Dubois was a most valuable officer, and could be relied on in any emergency, and his widow richly deserves a pension."

Edwin R. Lowe swears that he was "a submarine engineer and diver, and was employed by Captain Dubois to help to raise the Osage in Mobile Bay, and while so doing Captain Dubois fell through the battle-hatch of the Osage and was thereby severely injured by striking his ribs against the combings of the hatch, thereby fracturing his ribs and receiving severe injuries. Witness was at the time on board the vessel, and saw Captain Dubois a minute after he was hurt and had been carried on board the Althea, which he commanded."

Dr. Andrew Otterson swears that he "knew the claimant for twenty years, and always considered him sound and able-bodied until he was injured by a fall while in the Navy, and at this time he is of unsound mind and totally unfit to take care of his property or his family, and is now (October, 1874) an inmate of the Kings County Lunatic Asylum. Captain Dubois is not a dissipated man or drinking man. Affiant was his family physician."

Dr. Stephen B. Doty testifies substantially to the facts as set forth by the previous witness, and declares "that he was a man of good habits."

Dr. W. H. Randolph testifies that Captain Dubois was under his care in 1870, "suffering from cerebral disease, having disordered vision and partial loss of hearing. It is affiant's opinion the result of fall in the service."

Dr. Norvin Green, vice-president of the International Ocean Telegraph Company, testifies that "Captain Dubois was in the employ of said company in 1873. I soon discovered a sad defect in memory and wandering mind; soon after he became insane. The symptoms and results to the mind, and finally death, were such as might have resulted from a blow or fall on the head some years previously."

The full text of the rejection by the Pension Office is as follows:

"Immediate cause of death, softening of the brain. Remote cause, unknown; but not the result of any injury received while in the service.

"Reject.

"N. F. GRAHAM,
"*Medical Examiner.*

"Approved January 29, 1876.

"T. B. HOOD,
"*Medical Referee.*"

Your committee are of the opinion that T. B. Dubois, while in the line of duty in the United States naval service, incurred the disability which eventually terminated in loss of reason and loss of life, and that the petitioner (his widow) is entitled to a place on the pension rolls of the government, in accordance with the provisions of the pension laws.

Your committee have reached this conclusion after careful examination of the voluminous testimony found in the case. The character and standing of the witnesses, whose statements so fully explain and corroborate each other, make the chain of evidence complete in favor of the claim.

The records of Surgeon-General's Office show that the returns for the last quarter of 1865 are not on file, but the surgeon who treated deceased testifies clearly to the occurrence and to treatment for the injury. Captain Simpson, his superior officer, testifies to the injury, and in his letter refers to it.

Dr. Otterson has made a subsequent affidavit in which he certifies that he believes the death of the officer was the result of his service.

The committee recommend the passage of the bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 818.

IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2127.]

The Committee on Pensions, to whom was referred the bill (H. R. 2127) granting a pension to James F. Rose, have examined the same and report favorably, recommending the passage of the same. The bill has been twice favorably reported by committees of the House of Representatives, failing hitherto for want of time for its consideration. The facts, as stated in the House report, as follows, are adopted by your committee:

A similar bill was before the Forty-sixth Congress, and was favorably reported to the House, but was not acted upon for want of time.

The petitioner enlisted as a private in Company E, One hundred and seventy-sixth Regiment, New York Volunteers, in November, 1862, and served out his term of enlistment; afterwards was an employé in the quartermaster's department at Nashville, Tenn. While in this service he contracted typhoid fever, which resulted in inflammation of the eyes, from which he became totally blind. He has a wife and two children dependent upon him for support, and petitions Congress for a pension, to enable him to support them and himself. In support of his petition we find the indorsement of nearly all the line and staff officers of the One hundred and seventy-sixth Regiment, New York State Volunteers, testifying to the worth of petitioner as a soldier, and to his helpless condition, with a family dependent upon him for support.

The petitioner states that while rendering such service he contracted typhoid fever, which finally resulted in inflammation of the eyes, and that by reason thereof he is totally blind.

David T. Terry, the captain of the company while in the service, states that he knows the petitioner's statement to be true; and also, that the petitioner, while in the service of the government at Nashville, was injured in the line of duty, by loss of thumb of his left hand.

John P. Garrish, M. D., testifies that the petitioner is irrecoverably blind.

Your committee are of the opinion that the petitioner is worthy of relief by way of pension.

It is beyond reasonable doubt that the disease of the eyes and loss of sight resulted from the fever, and we have positive evidence of the injury to the hand, which increases his disability. We therefore report favorably upon the prayer of the petitioner, and recommend the passage of the bill (H. R. 2127) granting a pension to James F. Rose.

O

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 819.

# IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1098.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1098) granting a pension to Martha Westervelt, have examined the same, and report:*

That the facts in this case are fully set forth in House Report No. 1054, which is adopted by your committee, and is as follows:

Your committee adopt the report made to the Forty-sixth Congress by the Committee on Invalid Pensions, as follows:

*"The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1098) 'granting a pension to Martha Westervelt,' having had the same under consideration, beg leave to submit the following report:*

"It appears from an examination of the papers in the case on file in the Pension Office, before your committee, that the petitioner is the mother of William Westervelt, late a private in Company K, Third New York Cavalry, and who died while a prisoner at Andersonville, Ga., on or about July 23, 1864, as alleged in the mother's application for pension. The application was rejected by the Pension Office June 24, 1869, on the ground, 'Soldier not in line of duty when captured (and died when in rebel prison); got drunk on apple-jack; was left on the road by his officers, and captured by the enemy.'

"The certificate of Capt. Samuel C. Pierce, of claimant's company, says William Westervelt was with his company on a march made about the 7th day of May, 1864, from City Point to rear of Richmond. That on the 10th of May the company was at Coal Fields Station, on the Danville Railroad. That while the company was engaged in tearing up the track and destroying the buildings, the said Westervelt was seized with sudden sickness. That immediately after the track of the road was destroyed the regiment was ordered to move, and there was no means of bringing said soldier with the command, and I was obliged to order him left at a house near the road. This is the only thing I know personally about the case, but I have been informed that said soldier was afterwards seen in prison at Andersonville, Ga., and Florence, S. C., and that he died while in prison.

"The Adjutant-General's report says: 'Left in the road, by order, on account of drunkenness, near Coal Field, W. Va.'

"The deceased soldier was enrolled January 5, 1864. The case shows that his intoxication at the time of his capture was his first offense of the kind while in service. He died, leaving no widow, or children, or father surviving him.

"The evidence in the case is conclusive that the petitioner was dependent upon the soldier for her support; and she had been supported by him for a long time before he entered the service.

"There is positive proof in this case that the deceased soldier was a very steady man previous to his enlistment, and that he was captured just after doing duty (if not at the precise hour), with his comrades, in destroying the enemy's property. He may have succumbed to the insidious effects of 'apple-jack' at the time mentioned, but he was proven to be, ordinarily, a very steady man. He was captured, suffered a lingering death as a prisoner of war, and his aged, widowed mother needs, in lieu of his services, his country's bounty to help her declining years."

Your committee conclude to report favorably upon the prayer, and to recommend the passage of the bill (H. R. 1098) "granting a pension to Martha Westervelt."

Your committee are of the opinion that under the circumstances the dependent mother of the soldier should be entitled to a pension, and recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 820.

# IN THE SENATE OF THE UNITED STATES.

JULY 11, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5239.]

*The Committee on Pensions, to whom was referred the bill (H. R. 5239) granting a pension to Mrs. Spedie B. Eggleston, having examined the same, make the following report:*

That the material facts of this case are correctly set forth in the House Report No. 822 to the present session of Congress, which your committee adopt, as follows:

It is shown by the evidence originally filed in the claim for pension made by this petitioner to the Pension Office that she is the widow of Al F. Eggleston, who was a soldier of Company C, Sixth Massachusetts Volunteers; that he enlisted August 31, 1862; was mustered into rank August 31, 1862; discharged May 31, 1863; and died August 18, 1870, at Bloomington, Ill., the cause being given as "tuberculosis of the system."

He never made any application for a pension, but the application of the widow was filed September 18, 1871, and rejected April 3, 1875, on a decision of the medical referee of the Pension Office that the disease from which the soldier died "is not shown to be a result of the service." The decision was appealed from to the Secretary of the Interior March 31, 1876, and affirmed by that officer April 3, 1876, in the following language:

"The medical referee is of opinion that the disease of which the soldier died was the result of a scrofulous tendency for which his service as a soldier cannot be held responsible, and, therefore, that the death cause was in no way incurred or influenced by his military service. The question of a connection between the soldier's death and the service being purely a medical one, I do not feel at liberty to disturb the action of your office in the claim, and therefore affirm its rejection."

The manner of contraction of the disability of the soldier and cause of his death is thus succinctly stated by one of his physicians in referring to the decision of the Pension Office and Secretary of the Interior:

"This decision is certainly unjust, since he came of a healthy family, exempt from consumption; went into the Army a strong, well man, but was obliged to wade a river after a hard march, lay all night in his wet clothes, and the next day suffered from an inflamed testicle, which soon turned into a tuberculous degeneration, and progressed slowly but surely until it affected the lungs, causing *phthisis pulmonalis*."

That the case may be thoroughly understood, your committee present the following synopsis of the evidence filed in the claim:

"Three affidavits of Dr. Walter Burnham, late regimental surgeon, that soldier was free from disease at enlistment; that on December 13, 1862, he was ordered to cross the Blackwater River, in Virginia, by fording, for the purpose of supporting a battery; and that he was required to lie on the ground for a considerable time while his clothes were wet; that he soon after complained of swelling of his testicles; that he treated him, and the swelling subsided; that the next march brought on the swelling again and it never went down after; that after it had continued for three months it took on a scrofulous form, which, in affiant's opinion, would terminate in tuberculous disease.

"Two affidavits of Dr. J. H. Grant, that he treated soldier from June, 1863, to October, 1864, for scrofulous disease of the testicle and its accompanying sympathies; that

he had a cough and a proclivity to consumption of the lungs, which, in affiant's opinion, was excited and irritated by the exhaustion of the scrofulous degeneration.

"Three affidavits of Dr. Carl A. Volk, that he treated soldier from March to June, 1865, for scrofulous (or rather tuberculous) degeneration of the testicles, which, in affiant's opinion, would affect the lungs and cause death.

"Affidavit of Dr. N. B. Cole, that he treated soldier from December 10, 1865, to April 30, 1866, for tubercular degeneration of testicles. In affiant's opinion there was a tendency to tubercles of the lungs; a natural sequence of the difficulty from which he was then suffering.

"Affidavit of Dr. W. H. Stennett, that he treated soldier from spring of 1867 to November, 1868, for what he thinks was disease of the lungs.

"Two affidavits of Dr. W. A. Dunn, that he treated soldier off and on from May, 1870, until he died August 18, 1870, and that he had tuberculosis of lungs and nervous exhaustion.

"Affidavit of Dr. C. C. Beckley, that in his opinion the soldier was free from scrofula up to the time of his returning from the Army.

"Affidavit of L. C. Read and T. M. Adams, that they knew the soldier from the fall of 1867 until his death, during which time he had a cough. He had the appearance of having disease of lungs."

Thus it will be seen that in the face of the evidence of a number of reputable practitioners of medicine, some of whom had personal knowledge of the entire soundness of the soldier prior to his enlistment, and all of whom testify from actual observation of the progress of his disease, from contraction to fatal result, the rejection of the claim is made upon the *theory* entertained by the medical referee of the Pension Office alone; a case where doctors disagree, it is true, but the disagreement is a theoretical finding against practical personal knowledge.

From the review of the evidence your committee arrive at the conclusion that the deceased soldier contracted the disease from which he died in the military service of the United States, and in line of his duty. Such being the fact, his widow is clearly entitled to the benefit of the provisions of the pension laws. We therefore report favorably the bill granting a pension to Mrs. Spedie B. Eggleston, and recommend that it do pass.

Your committee are of the opinion that the weight of the medical expert testimony sustains the conclusion reached by the House committee, and they recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 821.

IN THE SENATE OF THE UNITED STATES.

JUNE 12, 1882.—Ordered to be printed.

Mr. CAMERON, of Pennsylvania, from the Committee on Naval Affairs, submitted the following

# REPORT:

*The Committee on Naval Affairs, to whom was referred the memorial of Alvah W. Hicks, asking compensation for himself and others for services on the Queen of the West, have examined the same, and beg leave to report:*

That they do not think the relief asked for should be granted, and ask that they be discharged from the further consideration of the memorial.

The following communication from the Navy Department fully explains the case, and is the basis of the committee's report:

WAR DEPARTMENT,
*Washington, June* 6, 1882.

SIR: I have the honor to acknowledge the receipt of your communication of the 24th ultimo, inclosing the petition of Alvah W. Hicks, for himself and others, in which it is claimed that compensation is due them on account of bounty, pay, prize-money, and pension, for alleged extraordinary services on the Mississippi River during the the recent war.

In compliance with your request for information concerning the subject of this petition, I have to state that the records in this department show that the names of each of the men referred to in the petition of Mr. Hicks, are borne upon the prize list of the Switzerland, for captures at Memphis, Tenn., in June, 1862, and that they shared in those captures according to their ratings upon the pay-roll furnished by the officer in charge of the accounts of the vessels then known as the Ram Fleet. This organization was under the control of the War Department, and was, at the time referred to, co-operating with the forces of the Navy on the Mississippi River. There is no reason to doubt the correctness of the roll referred to; and all prize or bounty money to which those men were entitled has long since been distributed, and the cases closed.

In relation to the matter of pension, to which Mr. Hicks also refers, I have to state the law authorizing pensions for service in the Navy, does not apply to the case of Mr. Hicks, who, it appears, was then serving with the Army.

The petition of Mr. Hicks is herewith returned.

Very respectfully,

WM. E. CHANDLER.
*Secretary of the Navy.*

Hon. J. D. CAMERON,
*Chairman Committee on Naval Affairs, United States Senate.*

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 822.

# IN THE SENATE OF THE UNITED STATES.

JULY 12, 1882.—Ordered to be printed.

Mr. ANTHONY, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany S. Res. 55.]

*The Committee on Naval Affairs, to whom was referred the joint resolution (S. Res. 55) conferring the rank of surgeon on the retired list of the Navy of the United States on Passed Assistant Surgeon Francis V. Greene, for highly meritorious service during the prevalence of the yellow fever on board the United States ship Lancaster in the year 1875, have had the same under consideration, and beg leave to submit the following report:*

The services of Passed Assistant Surgeon Francis V. Greene, in the volunteer service, were highly meritorious on the homeward passage of the flagship Lancaster from Rio de Janeiro. The death of the other medical officers left Dr. Greene the only one in attendance upon a vessel infected violently with yellow fever. His services on this voyage appear to have broken him down and to have disqualified him from further active duty. In consequence thereof, and as a reward for this service, he was transferred from the Volunteer to the Regular Navy, and placed on the retired list as passed assistant surgeon.

The joint resolution proposes to promote him on the retired list to the grade of surgeon. In the opinion of the committee this would be a precedent applicable to all other like meritorious cases. It is the duty of a medical officer in the Navy to risk his health and his life in the discharge of his duties. This Dr. Greene appears to have done. But it is plainly impracticable to promote every meritorious officer, often over the heads of others equally meritorious. The services of Dr. Greene were recognized in his transfer from the volunteer to the regular service, which places him for life on the retired pay of the grade in which he distinguished himself. This is all that is done in the case of officers of the Regular Navy, and it seems injudicious to make in his case the exception asked for. Such is the opinion also of the department, of which the committee asked its opinion in the case. The letter from the Secretary of the Navy is hereto appended.

The committee therefore report the joint resolution back adversely, and recommend its indefinite postponement.

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NAVY DEPARTMENT,
*Washington, April 22, 1882.*

I have the honor to acknowledge the receipt of your communication of the 6th instant, inclosing a copy of a "joint resolution (S. Res. 55) conferring the rank of sur-

geon on the retired list of the Navy of the United States on Passed Assistant Surgeon Francis V. Greene, for highly meritorious service during the prevalence of the yellow fever on board the United States ship Lancaster, in the year 1875."

In reply to your request for my views as to the propriety of the passage of the resolution referred to, and as to the effect it would have as a precedent, I have to state that, upon the examination of Acting Passed Assistant Surgeon Greene, under the authority of the act "to abolish the Volunteer Navy of the United States," approved February 15, 1879, the board, after consideration of the deserving character of the services rendered by Dr. Greene, found him physically disqualified for active service, and that his incapacity resulted from exposure and overexertion during an outbreak of yellow fever on board the United States ship Lancaster in 1875. Upon the recommendation of the board, Dr. Greene was transferred to the Regular Navy and retired in the grade of passed assistant surgeon.

In view of the fact that the services of Dr. Greene on the occasion referred to in the resolution were fully recognized by his transfer to the Regular Navy and by his retirement in the grade held by him in the volunteer service, further legislation in his favor, as is proposed by this resolution, would become a precedent for the presentation of similar measures by other officers of the Navy whose claims are probably as meritorious as those of Passed Assistant Surgeon Greene.

The resolution is herewith returned.

Very respectfully,

WM. E. CHANDLER,
*Secretary of the Navy.*

Hon. H. B. ANTHONY,
*of Committee Naval Affairs, United States Senate.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 823.

# IN THE SENATE OF THE UNITED STATES.

JULY 12, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 389.]

*The Committee on Claims, to whom was referred the bill (S. 389) for the relief of Austin Jayne and John K. Mathews, having examined the same, submit the following report:*

That the claimants were duly appointed local inspectors of steam vessels for the city of New York, duly qualified, and have discharged the duties of inspectors from the date of their appointment, August 15, 1866, up to the present time. That in the administration of their duties as inspectors of steam vessels they have given satisfaction. The law places these officers under the control of the supervising inspector of the district and of the inspector-general at Washington. At the time of their appointment, and for several years thereafter, they had an efficient clerk, whose duty it was to receive the public money for licenses to masters, pilots, and engineers of steam vessels, and render a proper account for the said money to the Treasury of the United States.

The inspector-general at Washington, James A. Dumont, recommended the appointment of one Henry Freeman, of Washington, to act as the financial clerk of the board of local inspectors for the city of New York, in place of the clerk who had up to that time faithfully performed his duties. This appointment of Henry Freeman was made on the 12th of December, 1876.

Addison Low, late supervising inspector of New York, in a letter addressed to the Committee on Claims, bearing date January 31, 1881, in speaking of the appointment of Henry Freeman, says:

> Mr. Dumont being my superior officer, I obeyed his order against the wishes and without the consent of said local inspectors.

After the appointment of said Freeman, he was intrusted with the duties devolving upon the former clerk; the fact of the said Freeman having been designated by the chief of the steamboat inspection service, justified the said inspectors in placing confidence in their new clerk and assigning him to the duties performed by his predecessor. On the 10th day of November, 1880, the claimants discovered that their clerk, Henry Freeman, was an embezzler of the funds paid to him in his official capacity for licenses, &c., to the extent of $5,984; they immediately caused the arrest of the said Freeman, the warrant for said arrest being sworn out by the claimants before the government had become aware of the embezzlement. The said Freeman was duly convicted, and on the 20th day of December, 1880, sentenced to pay a fine of $110, and to be

imprisoned in the Albany penitentiary for the term of three years. At the trial the said Freeman plead guilty to the charge of embezzlement.

F. H. Snyder, being duly sworn, deposes and says:

That during the winter of 1880 and 1881 he was employed by Messrs. Austin Jayne and John K. Mathews, United States local inspectors of steam vessels at New York, in the matter of a claim for relief against the United States Government for reimbursement of the sum of $5,984, paid by the said Jayne and Mathews, to make good a deficiency caused by embezzlement of Henry Freeman, late clerk to the local board of inspectors at New York. Deponent further sayeth that during the time he was employed in prosecuting the claim aforesaid, and subsequent to the conviction of said Freeman for said embezzlement, deponent called upon James A. Dumont, United States supervising inspector of steam vessels, at his office in Washington, for the purpose of procuring information regarding the life and habits of said Freeman prior to his appointment to the aforesaid clerkship. Deponent at this interview asked the said James A. Dumont if the said Freeman had not changed his name, or taken a different name from the one he was formerly known by, on assuming the aforesaid clerkship at New York. Said Dumont at first denied any knowledge of the matter, but when deponent told Dumont that he, deponent, had been informed that the said Freeman had assumed a different name, Dumont admitted a knowledge of the fact, and told deponent that the said Freeman, before his appointment to the clerkship aforesaid, went by the name of J. Harry Freeman. The said Dumont, during the same interview, told deponent that the said Freeman, prior to his appointment as clerk to the local inspectors at New York, was employed in the banking house of Lewis H. Johnson & Co., at Washington, D. C., and that while so employed he embezzled money belonging to the firm. Deponent further says that the first intimation deponent had that the said Freeman was a defaulter, before his defalcation while clerk of the aforesaid board at New York, was communicated to deponent by the said James A. Dumont. Deponent further says that subsequent to the afore-mentioned interview and conversation with the said Dumont, deponent called at the banking house of the said Lewis H. Johnson & Co., and was informed by a member of said firm that the said Freeman, prior to his appointment as clerk to the board at New York, was employed by them as clerk; and that while so employed he stole money belonging to the firm, the aggregate amount of which was over $6,000, and deponent further sayeth not.

The facts in this affidavit show the class of a man who was forced upon these bonded officials of the government as their financial clerk. The said Jayne and Mathews were responsible for the amount of the said Freeman's defalcation, and have paid into the Treasury of the United States the full sum of money stolen by the said Freeman.

It is provided that the accounts and books of the local inspectors shall be examined by the supervising inspector. Now, during the time covered by the said defalcations, there were three different persons holding office as supervising inspectors, yet none of them discovered the defalcation.

George B. N. Tower, supervising inspector of second district, says, in a letter addressed to the Hon. Secretary of the Treasury:

Mr. Rigby, my predecessor, acknowledges that if he had examined the accounts and books thoroughly he could not have failed to detect the falsification.

What is true in Mr. Rigby's case must likewise be true in the case of the other two supervising inspectors, who were in charge during the period covered by the defalcation, to wit, May, 1876, to October, 1880.

The fact is, the supervising inspectors should have discovered Freeman's shortage in accounts; this they did not. These accounts are, according to law, finally passed upon by the inspector-general, as an additional safeguard against mistakes, either intentional or unintentional. In this case the inspector-general passed as correct the accounts of said Jayne and Mathews, for a period of more than two years, while the accounts during this time were actually short by Freeman's defalcation. Thus these safeguards against fraud proved unavailing, and it was left to the claimants themselves to discover the embezzlement of the said Freeman. Now, while these officers ought to be equally responsible for a failure to discover errors in the accounts passed upon by them, as well

the said Jayne and Mathews, the fact is proved that the said Jayne and Mathews have alone been held responsible, and have been compelled to pay every dollar stolen by Freeman.

It does not seem to your committee that there was any greater amount of negligence on the part of the claimants than on the part of their superior officers. Nor does it seem equity that they should bear the total amount stolen by a dishonest clerk forced upon them without their consent or approval by a superior officer. The conviction of said Freeman, and the facts proven at his trial, leave no ground to doubt that the amount was stolen as alleged, and it is in evidence that the amount has now been covered into the United States Treasury by the said Jayne and Mathews. The facts seem to be that all those having supervisory power over the said Freeman placed the same confidence in him as was placed in his predecessor, and if Jayne and Mathews are blamable, those other officials whose duty it was by law to examine these accounts, are likewise blamable.

Your committee are of opinion that claimants are responsible for contributory negligence in not inspecting and discovering said defalcations at an earlier time, and were grossly neglectful of both the public and their own private interests in this respect. Under no law, therefore, is the government bound to reimburse the claimants for their loss. Although it was a hardship to the claimants, still this loss was occasioned greatly by their own neglect.

Your committee therefore report back said bill with the recommendation that it be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 824.

# IN THE SENATE OF THE UNITED STATES.

JULY 12, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill H. R. 1698.]

*The Committee on Claims, to whom was referred the bill (H. R. 1698) for the relief of the heirs of Peter Gallagher, have had the same under consideration, and beg leave to report as follows:*

The committee have carefully considered this claim of Peter Gallagher, and find that the facts are as stated in the report of the House Committee on Claims made the present year. They adopt said report, and recommend the passage of the bill. The House report is as follows:

In June, 1875, Peter Gallagher entered into a contract with Col. S. B. Holabird, who was chief quartermaster of the Department of Texas at that time, to supply Forts Stockton and Davis with certain quantities of forage for the fiscal year ending June 30, 1876. He was to furnish at Fort Davis 377,080 pounds of corn, at 2½ cents per pound, and 184,040 pounds of barley, at the same price. At Fort Stockton he was to furnish 368,849 ponnds of corn and 184,441 pounds of barley, at 2⅝ cents per pound. It was agreed by the terms of the contract that the claimant was to supply the above quantities, "more or less, as might be required during the fiscal year ending June 30, 1876." The contract or contracts, for there were two of them, were approved by the commander of the Department of Texas June 23, 1875, and by General Sheridan, July 6, 1875. In consequence of the exchange of the Eighth and Ninth Cavalry Regiments from New Mexico to posts in Texas during that year, and the exchanging regiments having to pass through Forts Davis and Stockton, a larger quantity of forage was required than the amount embraced in the contract, and the claimant was notified that a large addition would be required. He then made a proposition in writing to supply the additional quantity at $2 per bushel for both corn and barley. This proposition was accepted by Colonel Holabird, and forwarded to General Ord, with a recommendation of its approval. General Ord approved the same in the following words:

"Approved. The contract will be increased to one-third additional, or such amount within one-third as may be required for troops passing through, which is a legitimate demand for the post, and is included under the contract."

The forage was furnished, and bills for payment presented, and vouchers were allowed for the excess at 2½ and 2⅝ cents per pound, instead of $2 per bushel, which was about 3¼ cents per pound, and the claimant was paid by the government at 2½ cents and 2⅝ cents per pound instead of $2 per bushel. The difference amounted to $6,128.82. This amount the heirs of the claimant ask Congress to appropriate.

This claim has been presented and disallowed by the Third Auditor of the Treasury on the ground that the contractor was bound by his original contract to supply not only the amount stipulated, but "more or less," as might be required, and that the second contract made with the commander of the department, General Ord, and the quartermaster of the department, Colonel Holabird, was inoperative to change the first contract approved by General Sheridan. The Quartermaster-General also disapproves the claim, and so do most of the other officers who have been called upon to express official opinions. We believe that the opinions of General Ord and Colonel Holabird are rather to be taken than the opinions of others, because they know all the circumstances; it was in their department, and they certainly acted for the best interests of the government. The contractor, Gallagher, settled in the neighborhood

of these forts and opened up farms, as Colonel Holabird informs us, just to supply them, and greatly reduced the price the Army had been paying for forage before. In making his bid at the first contract he was evidently controlled by the amount of forage stipulated for and which he knew he could supply from the neighborhood. He perhaps never thought how elastic the words "more or less" might be. He looked at the amount required and the capacity of the neighborhood to furnish it, and bid accordingly. But when the extraordinary increase occasioned by the passage of the two cavalry regiments had to be met, the facts changed; he could no more supply them from the adjoining country. He had to go across the Rio Grande into Mexico into the State of Chihuahua and haul the corn 200 miles and pay a duty on it at the custom-house. The conditions were wholly changed, and General Ord and Colonel Holabird knew it, and hence agreed with him to supply the needed forage from Mexico at the enhanced price.

In reference to the obligation of the claimant to supply more or less than the stipulated amount, General Ord says:

"The practice in this department has been, when the contract price was more than the price at which any additional supply might be needed for the United States, to go into open market and purchase at lowest rate (see General Perry's recommendation on case of A. B. Adams), not giving the contractor, when he could profit by them, the benefit of the words 'more or less,' used in the contract. Therefore, I think it not just, when an additional supply is needed and the price in market is higher than the contract price, to hold the contractor to the words 'more or less;' in other words, hold him to them when he would lose, and deprive him of them when he would gain."

General Ord, in forwarding the papers to General Sheridan, says:

"On careful examination of the claim, I am of the opinion that Mr. Gallagher is clearly entitled, in equity, to payment for the grain furnished at the posts of Stockton and Davis for the Eighth and Ninth Cavalry, at the rate agreed upon with Mr. Corbett (Gallagher's agent), and that the difference between the amount paid him for the grain furnished those regiments and the price per bushel agreed upon is still due him."

Colonel Holabird says the claim is just. He says that he first inserted the words "more or less" in contracts for supplying posts, and that it was intended to cover the legitimate increase or decrease of the troops belonging to the post, and not to troops that were passing; and that the extraordinary demand for forage to meet the wants of the two exchanging regiments was not embraced in the first contract. Your committee believe that the contract made by General Ord and Colonel Holabird, for forage for the two regiments, is valid, and that, it having been executed in good faith, the government is bound to abide by it and pay to the representatives of Peter Gallagher the sum of $6,128.82; and they report back the bill to the House, and recommend that it do pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 825.

IN THE SENATE OF THE UNITED STATES.

JULY 12, 1882.—Ordered to be printed.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1874.]

*The Committee on Claims, to whom was referred the bill (S. 1874) for the relief of Elizabeth Gaskins, report thereon as follows:*

The claimant alleges in her petition that in 1862 she resided in Prince William County, Virginia, about 1½ miles from Manassas Junction. That a part of the Army of the United States, under the command of General McClellan, encamped on her farm, and that for some time her house was occupied by members of the Signal Corps attached to McClellan's Army. That while so occupied her house was destroyed by fire, and that the value of the house and furniture thus destroyed was $300.

The petitioner further alleges in her petition that while the said Army was thus encamped on her farm she was ordered by the military authorities to supply to a portion of General King's wagon division certain supplies, consisting of corn, buckwheat, hay, horses, cattle, pease, beans, chickens, and green fodder, a detailed statement of which, and of the alleged value thereof, is set forth in the petition. The alleged value of the said supplies and of said house is $1,931.

The claimant is a colored women and, probably, was loyal to the Government of the United States. If loyal she might have brought an action before the Commissioners of Claims to recover for the supplies furnished. She gives no excuse for not having brought such action.

Your committee do not report in favor of the allowance of a claim, if claimant has, or has had, a legal remedy and has not availed himself of such remedy, unless some satisfactory reason is given for his failure to do so. It seems from claimant's petition that the burning of her house was one of the exigencies of war, and in no view of the case is she entitled to be compensated therefor.

The only evidence in support of the claim submitted to your committee is claimant's unverified petition.

We recommend that the claim be not allowed, and that the bill be indefinitely postponed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 826.

# IN THE SENATE OF THE UNITED STATES.

JULY 12, 1882.—Ordered to be printed.

Mr. ROLLINS, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 2064.]

*The Committee on Naval Affairs, to whom was referred the bill (S. 2064) to restore John W. Simmons to his former rank in the United States Navy, and place him on the retired list, beg leave to report:*

That Mr. Simmons only served in the Navy about sixteen months, and then voluntarily resigned. This resignation was ten years ago, and the committee, seeing do reason for his restoration, recommend that the bill be postponed indefinitely.

The following communication from the Navy Department fully explains the case:

NAVY DEPARTMENT,
*Washington, July* 10, 1882.

SIR: I have the honor to acknowledge the receipt of your communication of the 29th ultimo, inclosing Senate bill 2064, "to restore John W. Simmons to his former rank in the United States Navy, and place him on the retired list," and requesting a statement of facts in the case of Mr. Simmons, with my views as to the propriety of the passage of the bill.

In compliance with your request, I transmit herewith an abstract of the record of service of Mr. Simmons in the volunteer and regular Navy, from which it will be seen that, after serving but about sixteen months as a boatswain, he voluntarily resigned his warrant as such, and has now been out of the service more than ten years.

The department is of the opinion that it is not advisable to enlarge the retired list of the Navy by additions to that list of persons from civil life because of former service in the Navy.

The object of the law regulating the retirement of officers of the Navy is to promote the efficiency of the service by placing upon the retired list such officers as may be unfit for active duty by reason of age or incapacity resulting from long and faithful service, from wounds or injuries received in the line of duty, or from sickness or exposure in service.

For the reasons above stated, I do not recommend the passage of the bill.

Very respectfully,

WM. E. CHANDLER,
*Secretary of the Navy.*

Hon. J. D. CAMERON,
*Chairman Committee on Naval Affairs, United States Senate.*

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 827.

# IN THE SENATE OF THE UNITED STATES.

JULY 12, 1882.—Ordered to be printed.

Mr. SEWELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1935.]

*The Committee on Military Affairs, to whom was referred the bill (S. 1935) for the relief of Capt. W. M. Wallace, have considered the same, and respectfully report:*

The following information is from the Secretary of War, and is made a part of this report:

HEADQUARTERS DEPARTMENT OF ARIZONA,
*Whipple Barracks, Prescott, Ariz., July 2, 1881.*

SIR: I have the honor to forward herewith, for the information of the division commander and the Quartermaster-General of the Army, a copy of the report of the proceedings of a board of survey convened at Fort Verde, Ariz., by Orders No. 76, current series that post, to investigate the circumstances attending the damage by fire to one set of officers' quarters thereat.

I have inspected the ruins in person, and find that the damage to the building was caused by its having a pine-wood ceiling.

I would therefore recommend that in future no public frame buildings in this department be walled or ceiled with the pine of this country, as it is light and full of pitch, but that they all be finished with lath and plaster.

Very respectfully, your obedient servant,

O. B. WILLCOX,
*Brevet Major-General, Commanding Department.*

The ASSISTANT ADJUTANT-GENERAL,
*Military Division of the Pacific, Presidio, S. F., Cal.*

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*Proceedings of a board of survey convened at Fort Verde, Ariz., pursuant to the following order, viz:*

[Orders No. 76.—Extract.]

FORT VERDE, ARIZ., *May* 26, 1881.

A board of survey is hereby ordered to convene at this post at 10 o'clock, a. m., tomorrow, the 27th instant, or as soon thereafter as practicable, for the purpose of ascertaining, if possible, the origin of the fire that partially destroyed No. 2 set of officers' quarters at this post. The board will report the circumstances, and make such recommendation as it may think fit, to avoid, if possible, the recurrence again of fire. It will also report what damage was incurred by the officers occupying the quarters.

Detail for the board—Asst. Surg. Elliott Coues, U. S. A.; First Lieut. Frank West, Sixth Cavalry; Second Lieut. G. L. Scott, Sixth Cavalry.

By order of Lieut. Col. W. R. Price.

G. L. SCOTT,
*Second Lieutenant Sixth Cavalry, Post Adjutant.*

FORT VERDE, ARIZ., *May 27*, 1881—10 *o'clock a. m.*

The board met pursuant to the foregoing orders.

Present, all the members.

The members of the board were all present at the fire, and assisted in extinguishing it; and having examined the premises after the fire, find that it broke out in or near a closet containing clothes, in north room of No. 2 set of officers' quarters, occupied by Capt. W. M. Wallace, Sixth Cavalry.

The fire was discovered about 7 p. m. on the evening of May 25, 1881; the alarm was immediately sounded, but the fire had already caught the room above and in roof of house. The usual means for subduing the fire were at once employed; and the officers, men, and employés worked incessantly one hour and ten minutes, and succeeded in extinguishing the fire, saving about one-half of the building. The post has an unlimited supply of water, an ample supply of fire-buckets, axes, ladders, hose, &c. The command is prompt to respond to an alarm of "fire," and very efficient in the performance of their duties at the fire.

The board is therefore unable to make any recommendation which, in their opinion, would lessen the probability of fire, or improve the means or mode of extinguishing it.

The board examined Capt. W. M. Wallace, Sixth Cavaly, who stated that there had been no fire during the day in the room where it broke out. The board is unable to determine the cause of the fire.

The board finds that Capt. W. M. Wallace, Sixth Cavalry, lost in the fire private property amounting to $795, as set forth in affidavit appended and marked A.

There being no further business before it, the board, at 11.30 o'clock a. m., adjourned *sine die*.

ELLIOTT COUES,
*Assistant Surgeon, U. S. A., President.*
FRANK WEST,
*First Lieutenant Sixth Cavalry, Member.*
G. L. SCOTT,
*Second Lieutenant Sixth Cavalry, Recorder.*

Approved.

WM. REDWOOD PRICE,
*Lieutenant-Colonel Sixth Cavalry, Commanding Post.*

TERRITORY OF ARIZONA,
*County of Yavapai, ss:*

Personally appeared before me, the undersigned, notary public in and for the county and Territory aforesaid, one W. M. Wallace, captain Sixth Cavalry, who, being duly sworn according to law, deposes and says: That while temporarily absent from the garrison of Fort Verde, Ariz., on the afternoon of the 25th day of May, 1881, his quarters were partially destroyed by fire, and that the following specified articles of his personal property were either entirely consumed by the flames or so severely burned as to render them unserviceable.

Furthermore, the deponent swears that there was no lighted lamps or candle or fire in fire-place or stove about the room where the fire originated; that the origin of the fire is entirely unaccountable to him; neither was there any kerosene oil or other combustible matter in that room or in the building. The deponent further swears that the prices set opposite the several specified articles are, to the best of his knowledge and belief, a fair and moderate valuation of what it will cost to replace them at this place, viz: Underclothing, $25; two pair uniform pants, $36; two pair boots, $30; one white coat, $15; one uniform coat, $50; one pair shoulder-knots, $25; one new blouse, $40; one pair shoulder-straps, $5; one pair slippers, $4; one pair trowsers, $10; one helmet and trimmings, $25; one helmet-cord, $20; nine dresses, $164; two boys' suits, $10; one black walnut bedstead, $40; one black walnut bureau, $25; one rocking-chair, $6; three black walnut chairs, $12; one pair blankets, $8; five pillows, $20; one pair window curtains, $10; one ingrain carpet, $50; one looking-glass, $16; two pairs shoes, $10; one portable iron bedstead, double, $30; one hair mattress, double, $40; two spreads, $10; sheets and pillow-cases, $8; one silk quilt, $25; pictures, $20; six boys' shirt-waists, $6. Total value, $795.

W. M. WALLACE,
*Captain Sixth Cavalry.*

Sworn to and subscribed before me this 30th day of May, 1881.

D. L. ROBINSON,
*Notary Public.*

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FORT VERDE, ARIZ., *June* 13, 1881—10 o'clock a. m.

The board reconvened pursuant to indorsements, dated Headquarters Department of Arizona, Prescott, Ariz., June 8, 1881 (see copy appended marked A and Fort Verde, Ariz., June 13, 1881).

Present, First Lieut. Frank West, Sixth Cavalry; Second Lieut. G. L. Scott, Sixth Cavalry.

Absent, Asst. Surg. Elliott Coues, U. S. A., on scout.

The board respectfully report that they investigated every circumstance connected with the fire, but are entirely at loss to account for its origin. Every witness was carefully questioned who it was believed could give the slightest information on the subject. There was nothing, however, elicited to show that the fire was or was not the work of an incendiary. As the board has no knowledge as to the cause of the fire, it can make no recommendations to prevent a similar one. It has already stated that means to extinguish fire are ample.

There being no further business before it, the board, at 11 o'clock a. m., adjourned *sine die*.

FRANK WEST,
*First Lieutenant Sixth Cavalry, Member.*
G. L. SCOTT,
*Second Lieutenant Sixth Cavalry, Recorder.*

Approved.

W. M. WALLACE,
*Captain Sixth Cavalry, Commanding.*

A.

[First indorsement.]

HEADQUARTERS DEPARTMENT OF ARIZONA,
*Whipple Barracks, Prescott, June* 8, 1881.

Respectfully returned by the commanding-general, who directs that the board be reconvened for further investigation and report. As the report of the board now stands there is ground for suspicion that the fire was the result of incendiarism, while there is nothing in the record to show that any steps have been recommended to discover the guilty party or parties, or secure the buildings at the post from like damage.

S. N. BENJAMIN,
*Assistant Adjutant-General.*

HEADQUARTERS DEPARTMENT OF ARIZONA,
*Whipple Barracks, Prescott, July* 2, 1881.

Approved.

O. B. WILLCOX,
*Brevet Major-General, Commanding Department.*

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
AND DEPARTMENT OF CALIFORNIA,
*Presidio, S. F., July* 7, 1881.

Official copy respectfully furnished for the information of the chief quartermaster, Military Division of the Pacific.

By command of Major-General McDowell.

J. C. KELTON,
*Colonel, Assistant Adjutant-General.*

[First indorsement.]

CHIEF QUARTERMASTER'S OFFICE,
MILITARY DIVISION OF THE PACIFIC, AND DEPARTMENT OF CALIFORNIA,
*Presidio of San Francisco, Cal., July* 11, 1881.

Respectfully forwarded to the Quartermaster-General of the Army, Washington, D. C.

R. SAXTON,
*Deputy Quartermaster-General, Chief Quartermaster.*

[Second indorsement.]

QUARTERMASTER-GENERAL'S OFFICE,
*Washington, July* 27, 1881.

Respectfully submitted to the honorable Secretary of War for his information.

Regarding the recommendation of the department commander, I note that all frame buildings lathed and plastered, with hollow walls, floors, and partitions, are extremely liable to destruction by fire.

A wooden ceiling is only a little more dangerous than a plastered ceiling.
This fire appears to have been set in a closet, perhaps by rats or mice and matches, or by spontaneous combustion, or by an incendiary.
Nothing to be done by the United States within the reasonable limits of appropriations granted by Congress will prevent such fire.

M. C. MEIGS,
*Quartermaster-General, Brevet Major-General, U. S. A.*

[Third indorsement.]

Seen by the Secretary of War. File.
By order of the Secretary of War.

H. T. CROSBY,
*Chief Clerk.*

WAR DEPARTMENT, *August* 1, 1881.

It having been the custom to allow officers in the service for losses caused by fire in their quarters, to the extent of their necessary equipments, the committee recommend the passage of the bill with an amendment reducing the amount to $500.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 828.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of May F. McKeever, asking increase of pension, from* 1870 *to* 1879, *from* $30 *to* $50 *per month, having considered the same, report as follows:*

Mrs. McKeever, as widow of Commodore McKeever, in 1856, was placed on the pension-roll at $50 per month, and so continued until 1870, when the Secretary of the Interior held that under the laws of 1862 and 1868 all pensioners should be reduced to the rates fixed by those statutes, and the pension was reduced to $30 per month.

In March, 1879, Congress increased the pension to $50 per month, and now she asks to be allowed the increase between 1870 and 1879 on the ground that the same was a vested right.

The committee cannot so hold, because the law fixing the pension of $50 per month was passed in 1843 and 1848, and Commodore McKeever entered the service in 1809, and recommend that the bill do not pass.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 829.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

*The Committee on Pensions, to whom was referred the petition of Mrs. Electa W. Jacobs, praying Congress by a special act to place her name upon the pension-roll as a pensioner of the United States from the 3d day of May, 1863, the date of the death of her second son, having examined the same, make the following report:*

The petitioner alleges that her eldest son, Enoch George Jacobs, was a soldier in the late war, and was commissioned a first lieutenant in the Twelfth Kentucky Infantry Volunteers; that he served three years, contracted disease of the heart during the siege of Knoxville, and at Jonesborough was honorably discharged, and though permanently partially disabled refuses to apply for a pension. Petitioner further states that her second son, Henry C. Jacobs, who was enrolled and mustered in June 19, 1861, as a private in Company C, Fifth Ohio Volunteers, was killed at the battle of Chancellorsville. She further states that her third son, Nathan Jacobs, a first lieutenant in said Twelfth Kentucky Infantry Volunteers, while his regiment was in camp near Lebanon, Ky., in February, 1863, was missed therefrom, and is supposed to have been murdered and robbed. She asks a pension on account of the death of her second son, Henry C., to commence from 3d May, 1863, the date of his death.

The records of the War Department show that this soldier *was* killed at the battle of Chancellorsville. The records further show that the elder son, Enoch George Jacobs, had charges preferred against him by the lieutenant-colonel of his regiment, and on August 24, 1864, tendered his resignation on account of said charges, and was, therefore, discharged August 26, 1864, "*for the good of the service.*" The charges preferred against him were "drunkenness," "disobedience of orders," and "absence without leave." There is no record on file with the papers as to the third son, Nathan. Petitioner's husband was living and providing her with an ample support when her sons entered the Army, and at the several dates of their respective deaths or discharge. She state—

That her two sons, Henry and Nathan, who were killed in the Army, contributed liberally to the support of herself and family during their lifetime, but *she cannot* say that she was *at any time during their lives dependent upon them for support*, for her husband always provided bountifully for his family until he became impoverished by his losses.

The losses referred to occurred during and since the war, as she alleges. Petitioner has never applied to the Pension Bureau for a pension as dependent mother of either or all of her sons, and it is manifest from the statements of her petition that such an application would have been wholly unavailing. The application to Congress for special relief

rests (except as to the facts disclosed by the records of the War Department) simply upon the averments of her petition. In the opinion of your committee no sufficient reasons are presented for granting her the special relief asked for in her petition, and your committee recommend its rejection, and that they be discharged from its further consideration.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 830.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3582.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3582) to reinstate Cornelius Fitzgerald on the pension-roll, having examined the same, make the following report:*

That said Fitzgerald enlisted in the service of the United States August 5, 1862, and was mustered as a private into Company G, One hundred and sixth Regiment Illinois Volunteers, on the 17th day of September, 1862, for three years or during the war. He was discharged, July 17, 1865, upon surgeon's certificate of disablility hereinafter mentioned. On the 15th November, 1865, he filed his application for pension, alleging, as the basis of his claim, that while in the service—

He was shot by the patrol guard through his left leg, which caused amputation, and consequently is deprived of said foot. Said wound was received in the following manner: Patrol guard was charged to arrest all persons found intoxicated; and while standing in a company, among whom some were intoxicated, said guards ordered the men to halt, and as others ran away he *walked* away with other men, when he was fired on by said guards, and wounded as stated. This was at Pine Bluff, Ark., on or about the 7th day of January, 1865.

During the investigation of the claim the Adjutant-General reported to the Commissioner that the records of his office showed that the claimant was discharged July 17, 1865, because "of gunshot wound received January 7, 1865, said to have been received while resisting the provost guard at Pine Bluff." The surgeon's certificate of disability, on which claimant was discharged, recited that he was incapable of performing the duties of a soldier because of amputation of left thigh, middle third, the result of gunshot wound, "said to have been received while resisting the provost guard at Pine Bluff, Ark., January 7, 1865." After the production of this record the Commissioner rejected the claim, whereupon an appeal was taken to the Secretary of the Interior, who, under date of March 15, 1872, returned the papers to the Commissioner, with the following decision in the case:

I have carefully examined the evidence in this case, and find that the records of the War Department report the soldier "discharged at Pine Bluff, Ark., July 17, 1865, of gunshot wound received January 7, 1865, said to have been received while resisting the provost guard." The claim was filed November 15, 1865, and not having been "prosecuted to a successful issue within five years from the date of such filing," it cannot be admitted in accordance with the requirements of the sixth section of the act of July 4, 1864, so long as that section continues in force and the record evidence remains unaltered. Your decision rejecting said claim is, therefore, affirmed.

Upon the rendition of this decision the claimant, through his attorney, took steps to have the record as to cause of disability and discharge *changed* or corrected by the Adjutant-General, and under date of February 10, 1874, it was changed or altered, the Assistant Adjutant-General placing upon the aforesaid surgeon's "certificate of disability for discharge" the following indorsement:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*February* 10, 1874.

The disability as within stated, on account of which this man was discharged, was incurred while in the line of duty.

The evidence on which this alteration of the record was made seems to have consisted of *ex parte* affidavits, which are not on file with the pension papers. A few days after this change in the record, under date of February 14, 1865, the Assistant Adjutant-General reported to the Commissioner of Pensions that—

Certificate of disability reports him discharged at Pine Bluff, Ark., July 17, 1865, because of amputation of left thigh, from gunshot wound received January 7, 1865, *while* in the line of duty.

The case was therefore reopened, and after examination a pension was granted the claimant March 17, 1874, at the rate of $8 per month, commencing July 17, 1865. This was increased to $15 per month from June 6, 1866; then to $18 per month from June 4, 1872, and then to $24 per month from June 4, 1874.

In 1878, some suspicion having been excited as to the claimant's right to a pension, the case was referred to a special agent, with instructions to make a thorough and exhaustive investigation, so as to ascertain whether the soldier was in the line of duty when he received the wound which resulted in amputation of leg. A large mass of testimony was taken by the special agent. Many witnesses, comrades of pensioner and members of the same regiment, stated that, as they understood the facts and circumstances at the time, Fitzgerald and one Thomas Hardin were out of camp and in town (Pine Bluff) without a pass or paper from the proper officer, and were drinking or acting disorderly; the provost guard arrested, or attempted to arrest them, when they both ran away, and not halting when the guard ordered them to *halt*, the guard fired at them and hit Fitzgerald in the thigh. Other witnesses give their understanding to the effect that the guard were attempting to arrest Hardin, who was drinking and disorderly, and while attempting to escape was shot at, when Fitzgerald, who was in company with Hardin, was *accidentally* wounded. These understandings and camp rumors, on the one side or the other, are of little weight and need not be dwelt upon, as there were eye-witnesses to the transaction who state the facts distinctly. The claimant himself, in his account of the occurrence, made to the special agent, May 1, 1878, states that he and Thomas Hardin went to town together; that after reaching there they stepped into a saloon to take a drink; that while taking the drink the provost guard came in and arrested Hardin. He then proceeds as follows:

Affiant knew of no reason (for the arrest of Hardin). Hardin was sober at the time. The guard said nothing to affiant. Affiant followed the guard with Hardin (there was but one of the guard) for a little distance out the alley to the street; at the street Hardin ran across the street and over the breastwork and escaped. Affiant came out to the street and turned to the left away from camp, and was walking just moderately down the sidewalk. The guard started after Hardin as affiant turned away. Affiant had gone but a little distance when he thought he heard some one running after him, but did not turn round; heard some one say, "Halt!" Affiant stopped, and just then a shot was fired by the guard, and affiant was hit in left thigh. * * * The man that affiant heard running was, as it appeared, the guard following affiant, and the shot was meant for him, he supposed.

He states that Lieut. Henry Roach gave him verbal permission to leave camp and go into town. This statement is not corroborated by any other witness. Lieutenant Roach is living, and his affidavit is neither produced nor its absence accounted for.

Thomas Hardin states that he and Fitzgerald went to town about 9 o'clock in the morning, with a written pass by Lieutenant Bowman; that they went into no store or saloon, but traveled around town till the provost guard came up and wanted to see their passes.

Affiant showed him the pass. He did not look at it particularly, but told *them* to go to camp, and if he found them in a saloon he would arrest them. They stepped into a saloon after the guard spoke to them, but did not get anything to drink. As they came out and were standing at the door the guard came up and asked if they were going to camp, and affiant told him when *they* got ready. He then told affiant to stand there, and he began to look for Fitzgerald; found him on outside of same crowd, and the guard told affiant to come along. Fitzgerald started off ahead; was about 30 yards in advance. As Fitzgerald came to the corner he turned round [it] and started off on the *run*. When the guard reached the corner he called out to him to *halt*, and as he *did not*, the guard leveled his gun and fired, hitting Fitzgerald in the leg. Affiant was beside the guard when he fired. Affiant *had a canteen* of whisky with him, and he and Fitzgerald had taken several drinks.

Alfred Clayton, a member of Company F, One hundred and sixth Regiment Illinois Volunteers, states that he was on detached service in a bakery at Pine Bluff at the time Fitzgerald was shot by the provost guard.

Affiant saw him half or three-quarters of an hour before the shooting. He had been drinking some, and asked affiant to go with him to take a drink. The next affiant saw of him was after he was shot, while they were taking him to the hospital. As affiant heard of the occurrence at the time, Fitzgerald was ordered to *halt* by the guard. He replied he would not, and *started to run*, and the guard fired at him, hitting him in the thigh. Affiant was about one and a half blocks distant at the time.

Joseph Ream, first sergeant of Company D, One hundred and sixth Regiment Illinois Volunteers, was well acquainted with Fitzgerald, and witnessed the affair. He states:

The first affiant heard of the affair was, he heard the order to *halt* given by the provost guard, and turning round saw the two men, said Fitzgerald and Thomas Hardin, running away, as it seemed, from the guard. The two men, affiant thinks, were together and on the sidewalk. The *men did not halt*, and the guard fired immediately after. There was but a short time between the halting and the shooting. The general orders were for the men not to go to town without a pass; they were liable to be taken up by the guard if they did. The guard also arrested soldiers who were drunk and disorderly.

Joseph M. Yelton states that he was in Pine Bluff and "saw Fitzgerald and Hardin once before the shooting occurred. They were both drinking, particularly Hardin."

D. H. Hortz, first lieutenant Company C, One hundred and sixth Regiment Illinois Volunteers, states that at the time of the shooting he was on court-martial or military commission duty in Pine Bluff. That he well remembers the circumstances of Fitzgerald being wounded. That Fitzgerald and Hardin were in town without a proper pass from the commanding officer of the regiment, and were drinking and noisy; the provost guard arrested them, or attempted to arrest them, when they broke and ran away; not *halting* when ordered, they were fired upon, and Fitzgerald was hit in the thigh, and had his leg amputated in consequence. He further states that "it was the order for enlistment men to have passes from the commanding officers of the regiment when going to town, and the provost guard arrested those without the proper pass."

Many other witnesses corroborate substantially the foregoing history of the affair, and establish beyond question that Hardin and Fitzgerald

were, if they were in town upon proper passes, which is not shown, drinking and acting disorderly, so as to subject themselves to arrest. That upon the guard attempting to arrest them, they ran and refused to obey his order to halt. It is also shown that the guard who did the shooting was never court-martialed or even censured for either wrongfully or hastily shooting. If Fitzgerald was in town, as he alleges, by the verbal permission of Lieutenant Roach, still he was there in pursuit of his own pleasure or business, and in no sense in the line of his military duty.

When the special agent made his report, accompanied by the numerous affidavits disclosing the foregoing state of facts, the Commissioner of Pensions submitted the evidence to the War Department, and the Adjutant-General, after an examination of the same, *revoked* the change or correction of the record made February 10, 1874, as above set forth, and placed upon claimant's certificate of disability and discharge the following:

ADJUTANT-GENERAL'S OFFICE,
*June* 20, 1878.

The indorsement hereon, dated February 10, 1874, is revoked and canceled, and the certificate of disability is amended to show that the gunshot wound, which resulted in amputation (mentioned herein), was *not* received in the line of duty.

(Signed.) T. W. BENJAMIN,
*Assistant Adjutant-General.*

This restored the record to its original shape, and it was so certified to the Commissioner. After a thorough examination the Commissioner dropped the claimant's name from the pension-roll because his disability was not received in the line of duty. An appeal was taken to the Secretary of the Interior, who, on a careful review of the whole, in September, 1878, affirmed the action of the Commissioner.

The bill proposes to restore Fitzgerald to the pension-roll as of the date his name was dropped therefrom. Your committee are clearly of the opinion that he is not entitled to this relief; that the action of the Pension Bureau was manifestly correct, was properly affirmed by the Secretary of the Interior, and should not be overruled. They accordingly recommend that the bill be indefinitely postponed by the Senate.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 831.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 924.]

*The Committee on Pensions, to whom was referred the bill (S. 924) granting a pension to James Kitchen, having duly considered the same, make the following report:*

That this case was rejected at the Pension Office on the ground that the evidence failed to connect any disease with which the claimant may now be suffering with his service in the Army.

The evidence in this case is singularly deficient in proving the claim. The affidavits show erasures, and all in such a bad state therefrom as to be unworthy of being received as evidence. Figures have been marked over such erasures, and your committee are unable to determine whether such figures were filled in before the affiant was sworn or not. However this may be, the case is by no means established, and, accepting all the affidavits, does not show that the disease complained of originated in the service.

Your committee therefore recommend the indefinite postponement of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 832.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 6008.]

*The Committee on Pensions, to whom was referred the bill (H. R. 6008) restoring Eliza M. Bass to the pension roll, having examined the same, make the following report:*

The facts are stated in the report to the present Congress of the House Committee on Invalid Pensions, as follows:

Sion S. Bass was the colonel of the Thirtieth Regiment Indiana Volunteers, and was killed in the battle of Shiloh, April 7, 1862.

Eliza M. Bass was his widow until May 27, 1868, when she married one William Burrett. She was divorced from Burrett in May, 1871, having lived with said named husband but a short time, and being divorced on account of cruel treatment. She was also a daughter of Mrs. E. E. George, who was one of the most distinguished of the women who gave their services to the sick and wounded soldiers of Indiana, and who died at Charlotte, N. C., while engaged in this charitable and patriotic occupation.

Mrs. Bass, by her marriage, lost her right to a pension. She asks that the right be restored to her, and shows that she is in indigent circumstances.

The committee are of opinion that this case is exceptional, and that the applicant should be restored to the rolls. They therefore recommend the passage of the House bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 833.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1170.]

The Committee on Pensions, to whom was referred the bill (S. 1170) granting a pension to Jane S. Taplin, have examined the same, and report the same favorably and recommend its passage.

The claim is made by Jane S. Taplin, mother of Osman B. Taplin, late a private in Company E, Second Wisconsin Volunteers, upon the ground that she was dependent upon her son, who died in the service, for support. The Pension Office reject the claim upon the ground that such dependence at the time of the death of the soldier is not sufficiently proved; but additional evidence has been filed before us, and we believe the fact of dependence is fairly made out, and we therefore recommend the passage of the bill, so amended as to make the commencement of pension to date with the passage of the act.

O

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 834.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1925.]

*The Committee on Pensions, to whom was referred the bill* (*S.* 1925) *granting a pension to Ann Elizabeth Rodgers, having had the same under consideration, respectfully report:*

Mrs. Rodgers is widow of Rear-Admiral John Rodgers, who died May 5, 1882, as senior rear-admiral on the active list, after fifty-four years' service.

Rear-Admiral Rodgers was born in Maryland, August 8, 1812, entered the Navy as a midshipman April 18, 1828, and was for many years almost continuously afloat, serving with credit in various parts of the world, his most important command prior to 1861 being the exploring expedition to the China seas and through Behring Straits in 1855. During the rebellion he served and fought most courageously and effectively. He organized the Mississippi flotilla, and superintended the construction of the first iron-clads upon the western rivers. He was a volunteer aid at the battle of Port Royal, November 7, 1861. He commanded the Galena on the James River, and, on May 15, 1862, attacked the formidable Fort Darling until all ammunition was expended, his vessel pierced with many shots, and more than half his crew killed or wounded. In 1863 he carried the monitor Weehawken in heavy gales from New York to Port Royal, entered Warsaw Sound, Georgia, and encountered and captured the Confederate iron-clad Atlanta.

On December 23, 1863, he received the thanks of Congress—

For the eminent skill and gallantry exhibited by him in the engagement with the rebel armed iron-clad steamer Fingal, alias Atlanta, while in command of the United States iron-clad steamer Weehawken, which led to her capture on June 17, 1863; and also for the zeal, bravery, and general good conduct shown by this officer on many occasions.

He commanded the naval stations at Boston and Mare Island most efficiently, and for two years our naval forces in the China and Japan seas. Upon several occasions while in command abroad he dealt with delicate questions of diplomacy and international law so as to merit and receive the hearty approval of his government. At the time of his death he was Superintendent of the Naval Observatory and chairman of the Light-House Board.

He died from disease incident to the service.

The bill provides a pension for her in accordance with the precedents in cases of the widows of naval officers of high rank, and its passage is recommended.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 835.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1577.]

*The Committee on Pensions, to whom was referred the bill (S. 1577) granting a pension to Hardie Hogan Helper, have carefully examined the same, and report:*

Mr. Helper enlisted August 18, 1861, in Eighth Illinois Cavalry, and was discharged, at his own request, February 1, 1862, that he might act under General Burnside in a civil capacity. He was employed by General Burnside in the secret service, and while so acting was directed by General Burnside to burn the railroad bridge at New Berne, N. C. In performing this service he was subjected to great exposure and hardship during eight days and nights, and contracted the disease which has resulted in paralysis and almost total helplessness.

The committee recommend the passage of the bill with an amendment, adding at the end of the bill the words "and pay him a pension at the rate of $10 per month from the passage of this act," and ask that said bill be amended by striking out all of said bill commencing after the word "month" in line nine to the end of said bill, and adding after word "rate," in line nine, *of ten dollars.*

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 836.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1332.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1332) granting a pension to Elizabeth Bauer, having carefully considered the same, report as follows:*

That the Committee on Invalid Pensions, House of Representatives, have made during the present session a favorable report in the case of Mrs. Bauer, as follows:

The petitioner filed a claim in the Pension Office April 4, 1864, in which she alleges that her husband, Michael Bauer, while serving in the command aforesaid, obtained a furlough to visit his family at Cincinnati, Ohio, and while en route to his home, on the steamer "Major Anderson," he fell overboard and was drowned in the Ohio River; this, on or about January 28, 1864. She declares her inability to show by the testimony of the company officers that the soldier was on furlough at the time of his death, but filed in support of her allegation the affidavit of the orderly sergeant of the company, from which it appears that the soldier did receive a furlough for ten or fifteen days while the command was stationed at Buck Lodge Station, Ky., and that it was reported afterwards to the company that he was lost overboard while on his way home. There is also on file with her papers in the Pension Office the sworn statement of one William Meyer, to the effect that in January, 1864, while on board of the "Major Anderson," en route from Louisville, Ky., to Cincinnati, he met petitioner's husband, an old acquaintance, who was then a private in Company C, One hundred and sixth Ohio Volunteers, and on his way home on furlough. About 5 o'clock p. m., while the soldier was resting on some cotton bales, the boat was violently shaken by the ice running into it and breaking the rudder. A few minutes later affiant went to the cotton bales on which he left the soldier resting just before the shock, but failed to find him. It was the impression of the affiant, as well as others who had observed the soldier on the cotton bales, that he must have been thrown over into the river by the shock and drowned, although no one, in the confusion on board, noticed the fall. The witness also states that the soldier was in his sound mind, sober, and contented at the time, and had no reason to take his own life.

The Adjutant-General's report in the case shows that the soldier enlisted August 16, 1862, and was drowned January 28, 1864, while on his way home, on furlough.

The claim of the widow has been rejected by the Pension Office because the soldier was on furlough other than veteran or sick furlough at time of his death, and therefore not in line of duty.

The committee is satisfied that the soldier came to his death in the manner described by William Meyer, and that the petitioner, whose relationship to the soldier is fully established by the papers on file in the Pension Office, is entitled to relief, and therefore recommends the passage of the bill.

In this case there does not appear to have been any contributive negligence on the part of said Michael Bauer to cause his death, and it is a case for a pension, should any relief in deaths occurring while soldiers were on furlough, other than veteran or sick furloughs, be granted.

but your committee are of the opinion that there are many cases of death of soldiers while on furlough, and if pensions are to be given under these circumstances, a general law should be passed to that effect, in order that none should be excluded.

With this view, therefore, the committee recommend that the bill be indefinitely postponed.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 837.

# IN THE SENATE OF THE UNITED STATES.

JULY 14, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3599.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3599) granting a pension to David T. Stephenson, having considered the same, submit the following report:*

That David T. Stephenson was a watchman on board of the United States chartered transport Echo; that while engaged in performing his duty in such capacity on board the said transport that steamer was employed in conveying ammunition for the relief of Fort Donelson; that while the said transport Echo was so engaged she was attacked by the enemy, and all hands on board were called upon to defend the transport and her cargo. The said David T. Stephenson responded to the call, and while so engaged a bombshell from the enemy was exploded on the decks of the Echo, and resulted in tearing off both of Stephenson's feet, thus leaving him in a terribly crippled condition.

Mr. Stephenson is now very poor, and unable to make a living.

A legal technicality prevents his obtaining a pension under the law. Had he been an enlisted man and done the same duty he would in all probability have applied for a pension prior to July 1, 1880, and drawn arrears from 1864. The duty was meritorious and necessary, the result equally disastrous as though the claimant had been an enlisted man, and the disability incurred in line of military duty.

Congress has heretofore granted pensions to scouts and teamsters where the disability was less and the services no more meritorious, and without intending to establish any precedent in such cases, the committee are of the opinion that the claimant is in equity entitled to a pension, and recommend that the bill H. R. 3599 be passed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 838.

# IN THE SENATE OF THE UNITED STATES.

JULY 15, 1882.—Ordered to be printed.

Mr. ANTHONY, from the Committee on Printing, submitted the following

# REPORT:

[To accompany bill S. 2151.]

*The Committee on Printing, to which were referred the reports of the Tenth Census, have had the same under consideration, and beg leave to report as follows:*

The Tenth Census is, doubtless, the most extensive and complete that has been taken; more comprehensive in its scope, more minute in its details. Its reports constitute a wonderful exhibition of the population, the resources, the accumulated wealth, and the varied industries of the country. Its preparation has been laborious and costly. The results of the work can be made available only by general distribution among the public libraries, and, to a considerable extent, among individuals.

Of course it has not been possible for the members of the committee to examine with any degree of minuteness the voluminous reports that have been sent to the Government Printing Office, which include only a portion of the work. The committee have been obliged to rely upon the reputation and the representations of the two intelligent and distinguished statisticians under whose direction the work has been performed.

It has, however, been objected that some of the compilations, interesting in themselves, do not properly belong to the enumeration of the census, and that they swell the series of reports to unwieldy proportions. The committee, while feeling the force of this objection, and thinking that some of this work might have been omitted without great disadvantage to the value of the series of reports, do not feel authorized to recommend that their publication be withheld. The expense of their preparation has been incurred, and the work executed under the superintendence of able and accomplished specialists. To refuse the comparatively small cost of printing a reasonable number of them would render useless all the cost of their preparation, and they add highly interesting and valuable information upon the subjects on which they treat. Nevertheless, upon consultation with Colonel Seaton, now the head of the Census Bureau, it has been decided that, while no report or essay shall be omitted, the aggregate can be condensed from 18,000 pages to 15,000, securing a very considerable reduction in cost without loss of interest or value.

The committee therefore recommend that the "usual number" of the complete series of separate reports, reduced to 15,000 pages, be printed, with 10,000 additional copies of the entire series of reports, 20,000 ad-

ditional copies of the Report on Population, 20,000 additional copies of the Report on Agriculture, 10,000 additional copies of the Report on Manufactures and Mechanics, and the "usual number" of the Compendium, with 100,000 additional copies. This last-named volume will be of the most practical value for popular reference, and the committee would recommend a larger number, but, the work being stereotyped, new editions can be ordered if found desirable.

Objection has been made frequently to the existing method of distributing public documents, by which duplicate copies sometimes fall into the hands of persons to whom they are of little value, while public libraries and institutions, to which they would be of great advantage, fail to receive them. The committee have not recommended in the bill accompanying this report any reform in the mode of distribution, preferring to leave that matter to the judgment of the Senate. This publication will come under the general law which provides for the distribution among libraries in every section of the country, designated by members of Congress, copies of the "usual number" printed of all government publications.

Undoubtedly the best method of distribution of public documents is their sale at a low price; but this proposition, although frequently urged by the committee, and receiving the assent of the Senate, has not found favor with the other branch of Congress. It is well known, however, that any person desirous of buying public documents can order them, by forwarding the estimated cost and ten per cent. added, of the Public Printer in advance of publication. But this method does not meet the case, inasmuch as the general public is not aware of the forthcoming documents till they are actually printed. An additional number of all documents of general interest should be printed for sale, without having been ordered, and a list of them, with the prices, should be published at least once a week in the Congressional Record.

The entire cost of the publication recommended in the bill which accompanies this report is $835,461.61.

*Estimates of the cost of printing and binding the Tenth Census.*

| | | |
|---|---|---|
| For composition, corrections, and stereotyping the whole series of reports, making 15,000 pages | | $126,599 70 |
| For engraving for the same, not yet executed | | 15,000 00 |
| | | 141,599 70 |
| For printing, paper, and binding the regular number, 1,900 sets | | 62,407 50 |
| | | 204,007 20 |
| For printing, paper, and binding 10,000 sets | $278,250 00 | |
| For printing illustrations for 10,000 sets | 50,000 00 | |
| | | 328,250 00 |
| Total cost of composition, corrections, stereotyping, engraving, press-work, paper, binding, and printing illustrations, 10,000 sets and 1,900 sets | | 532,257 20 |
| The cost of printing additional sets, $32.82. | | |
| For 20,000 additional copies of the volume on Population (cost per volume, $1.87½) | | 37,587 52 |
| For 20,000 additional copies of the volume on Agriculture (cost per volume, $1.80) | | 36,007 36 |
| For 10,000 additional copies of the volume on Manufactures and Mechanics (cost per volume, $1) | | 10,188 22 |
| For composition, corrections, and stereotyping the Compendium, paper, and binding | | 163,000 00 |
| For printing, paper, and binding the regular number, 1,900 copies | | 916 51 |

| | |
|---|---|
| For printing, paper, and binding 100,000 additional copies | $48,237 00 |
| Total cost of composition, stereotyping, corrections, printing, paper, binding, engraving and printing illustrations, with the regular numbers, 10,000 sets, 20,000 of the volume on Agriculture, 20,000 of the volume on Population, 10,000 of the volume on Manufactures and Mechanics, and 100,000 volumes of the Compendium | 828,193 81 |
| For 1,500 copies of the Census Report on Fish, for the Fish Commissioner | 2,978 00 |
| For 6,000 copies of the History of the National Loan in the Census Reports, for the Treasury Department | 4,289 80 |
| Total | 835,461 61 |

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 839.

# IN THE SENATE OF THE UNITED STATES.

JULY 18, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 2037.]

*The Committee on Military Affairs, to whom was referred the bill (S. 2037) to amend the military record of Samuel S. Troy, have duly considered the same, and submit the following report:*

Your committee referred the bill to the Secretary of War for information, and received from him the letters and testimony hereinafter set forth. In view of the facts fully shown, Captain Troy is entitled to no relief; and your committee recommend that the bill be indefinitely postponed.

The letters and testimony are as follows:

WAR DEPARTMENT,
*Washington City, July* 14, 1882.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, inclosing Senate bill 2037, to amend the military record of Samuel S. Troy, late a captain in the Fourth Iowa Cavalry, and requesting to be furnished with the military history of this officer; also with my opinion as to the justice of granting the relief sought in the bill.

In reply, I beg to invite your attention to the inclosed report from the Adjutant-General, dated the 8th instant, and the accompanying papers, which contain the information requested, the views of the Adjutant-General therein expressed being concurred in by me.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. F. M. COCKRELL,
*of Committee on Military Affairs, U. S. Senate.*

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WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*Washington, D. C., July* 8, 1882.

SIR: I have the honor to return herewith letter of the Hon. F. M. Cockrell, of Committee on Military Affairs, United States Senate, inclosing a bill (S. 2037) to amend the military record of Samuel S. Troy, and to report as follows:

The records of this office show that Samuel S. Troy was mustered into service as first lieutenant Company H, Fourth Iowa Cavalry, September 28, 1861; as captain to date November 1, 1862; and that on February 12, 1864, he was detailed and ordered to proceed to Davenport, Iowa, to take charge of, and conduct recruits to the regiment.

On March 9, 1864, he was, by direction of the President, dishonorably dismissed the service of the United States, with loss of all pay and allowances, "for dishonesty in selling government horses, thereby defrauding the United States." Copies of the papers upon which his dismissal was based are herewith.

March 2, 1867, Hon. Wm. B. Allison, M. C., presented an application of Captain Troy for an honorable discharge, and was informed that the charges against this officer had been thoroughly investigated and fully sustained by competent evidence, and that, therefore, the request could not be granted.

June 12, 1880, Hon. N. C. Deering, M. C., was informed, in reply to a reference by him of a letter of Captain Troy, in which the latter requested a revocation of his dismissal, that at that late date no relief could, under any law or rule, be afforded.

Owing to the gravity of the charges, and the sufficiency of the evidence upon which this officer was dismissed, favorable consideration of the bill cannot be recommended.

I am, sir, very respectfully, your obedient servant,

CHAUNCEY McKEEVER,
*Acting Adjutant-General.*

The Hon. the SECRETARY OF WAR.

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REAR OF VICKSBURG, *June* 25, 1863.

DEAR SIR: Having thought for a long time about the manner things are carried on by some of the officers in this regiment (Fourth Iowa Cavalry), I have concluded to report to you.

For instance, Captain Troy, Company H, Fourth Regiment Iowa Cavalry, rides government horses, saddle equipments, and arms; deals in contraband horses, buying and selling them; allows this man to trade government horses for those that are not, getting in some instances as high as $25 boot money. He has made false musters for the benefit of himself and lieutenants. At the present time he is harboring an old friend of his who left Iowa, fearing the draft, and is an abetter with him in dealing in contraband horses, mules, trunks, clothing, &c. These things are patent to any observer. Are such things allowed, is the question? A reply respectfully asked.

Yours for right,

D. A. BABCOCK,
*Sergt. Company H, Fourth Regiment Iowa Cavalry, rear of Vicksburg.*

Secretary STANTON.

[First indorsement.]

QUARTERMASTER-GENERAL'S OFFICE,
*November* 10, 1863.

Respectfully referred to Lieut. Col. J. D. Bingham, chief quartermaster, &c., for investigation and report. This letter to be returned.

CHAS. THOMAS,
*Acting Quartermaster-General.*

HEADQUARTERS SEVENTEENTH ARMY CORPS,
OFFICE ASSISTANT INSPECTOR-GENERAL,
*Vicksburg, January* 24, 1864.

The above communication, addressed to the Secretary of War by Sergt. D. A. Babcock, of H Company, Fourth Regiment of Iowa Cavalry, having been referred to me for investigation by Lieutenant-Colonel Bingham, chief quartermaster of the Department and Army of the Tennessee, and having examined into and investigated the case as thoroughly as it is possible to do under the circumstances, I have the honor to make the following report:

Sergeant Babcock, who wrote the said communication, was absent on recruiting service, and his testimony could not be obtained. Three private soldiers were selected from H Company, they having been recommended to me by the commanding officer of the regiment, as the ones who would be likely to know most about the charges alleged against Captain Troy by Sergeant Babcock; and their testimony in the case is hereto attached, in the shape of depositions, marked, respectively, Exhibits A, B, and C. I also took the deposition of Col. E. F. Winslow, at the present time in command of the entire cavalry force in this vicinity, and which is hereto attached, marked Exhibit D, to which depositions attention is respectfully called.

I am very well satisfied that all the charges made by Sergeant Babcock against Capt. S. S. Troy, of H Company, are true, except, perhaps, the one averring false musters for the benefit of himself and lieutenants. There is no proof to substantiate this charge, and I am satisfied that although private Levi T. Logan acted as a servant in taking care of the captain's horses, yet the captain had in his employ nearly all the time since he has been in the service a private servant not a soldier, and for which servant he drew the proper pay and allowances.

It is evident from the testimony that Captain Troy has been deeply engaged, ever since he has been in the service, in trading government horses, and permitting his men to trade government horses for those that were not, and in buying and selling

and permitting his men to buy and sell and trade contraband horses. The testimony is clear that government horses were traded off, and that horses taken by the men in battle and on the march and scouts, and which properly belonged to the Government of the United States, were transferred to third parties. It is not material whether the property contraband of war was sold, traded, or given away, so long as transfers were made to third parties, who could not have any interest or bona fide title to the property.

A great deal of the testimony as to the fact whether the money was actually paid over for horses sold, &c., is upon information and belief, but there are several instances where the witnesses swear point-blank that the money was paid and received, and they state the exact amount.

The man referred to in Sergeant Babcock's communication as being an old friend of Captain Troy, and that the captain harbored him for a long time, and that he was an abetter with him in dealing in contraband horses, &c., is the man Whitmore, referred to in depositions A, B, and C, and I am satisfied that the charge is true. It is clear that Whitmore was a rascal and a robber, and that he was with the company for no other purpose than to steal horses and other contraband property, and realize on the same. Whitmore carried on his contraband trade in the presence of and with the knowledge and consent of the captain, and was never reported by him, but, on the contrary, was permitted to remain with the company, slept in the same tent, and messed with Captain Troy until after the surrender of Vicksburg.

I am satisfied that Captain Troy is guilty of the charges made against him, with one exception, and he should be dishonorably discharged from the service of the United States with a loss of all pay and allowances. But I am also well satisfied that he is not the only one of the Fourth Iowa Cavalry who has been guilty of this wholesale dealing in contraband animals and property. If the matter was to be thoroughly investigated I think it would become necessary to dismiss nearly every officer of said regiment from the service.

From the time the command was first organized, over two years since, up to the time Colonel Winslow was placed in command, it has been the custom of officers and private soldiers, from the highest to the lowest, to trade government horses for those that were not, and to sell and to trade horses captured by the men in battle and on escorts, and to buy and sell horses contraband of war. And, as near as I could ascertain, the men and very many of the line officers really supposed they were doing no wrong.

So long as their superior officers did these things and permitted officers of the line to steal and trade indiscriminately, it could not be expected but that the men would follow their example. I make this statement in justice to Captain Troy. I do not think he is more guilty than many others in the command, but he happens to be the first one complained of, and if he should be dismissed from the service, as he most assuredly ought to be, the stone will only have commenced to roll, and there will be no rest until a thorough investigation has been made of the conduct of every officer of the regiment.

Since Colonel Winslow has been in command there has been a great change. Stringent orders have been issued, and buying, selling, and trading has been stopped.

Very respectfully, your obedient servant,

WM. E. STRONG,
*Lieut. Col. and Asst. Inspr. Genl. 17th Army Corps.*

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## EXHIBIT A.

*Deposition of Private Samuel M. Legge, H Company, Fourth Regiment Iowa Cavalry.*

STATE OF MISSISSIPPI,
*Warren County, ss:*

Before me, William E. Strong, lieutenant-colonel and assistant inspector-general of the Seventeenth Army Corps, appeared Samuel M. Legge, private Company H, Fourth Regiment Iowa Cavalry, and in a certain cause of the United States *vs.* Capt. S. S. Troy, Company H, Fourth Regiment Iowa Cavalry, referred to me by Lieutenant-Colonel Bingham, chief quartermaster of the Army and Department of the Tennessee, for investigation and report, after being first duly sworn by me, deposed as follows:

Interrogatory 1. What is your name; to what company and regiment do you belong; what is your rank?

Answer to interrogatory 1. My name is Samuel M. Legge; I belong to Company H, Fourth Regiment Iowa Cavalry, and I am a private soldier.

Interrogatory 2. Do you know Captain Troy, of Company H, Fourth Regiment Iowa Cavalry; and, if so, how long have you known him?

Answer to interrogatory 2. I am well acquainted with Captain Troy of said Company H; have known him for two years.

Interrogatory 3. Have you any knowledge of Captain Troy's ever dealing in contraband horses, buying and selling them, or allowing any of his men to trade government horses for those that were not? If you have any such knowledge, state the same fully and freely.

Answer to interrogatory 3. Yes. On or about the 1st of June, 1863, while Company H was on picket duty at the Marshall place, some 8 miles east of Vicksburg, on the Benton Road, Captain Troy purchased of Andrew A. Gibson, a private of said Company H, one gray mare, about 9 years of age, and paid therefor $15. Captain Troy had the said gray mare in his possession about five months, after which time the mare disappeared. I cannot swear that the captain actually sold the mare—got the money for her—but it was generally understood by the company that the mare had been sold. I have seen the mare once since; she was in the possession of the Fifth or Eleventh Illinois Cavalry, and an enlisted man was riding her. On the 14th day of last May, while our regiment, the Fourth Iowa Cavalry, was in Jackson, Miss., Corporal L. P. Chandler, of H Company, captured one large bay gelding. About two weeks subsequent Corporal L. P. Chandler traded the said bay gelding with Captain Troy for another bay gelding somewhat smaller than his own. Captain Troy gave Corporal Chandler some boot—cannot swear to the amount—and gave the corporal permission to sell or trade the said horse as he might think proper. Some time after this, Captain Troy sold or traded the horse which he got from Corporal Chandler to Lieutenant Fitch, of H Company, and the horse which Corporal Chandler received from Captain Troy he sold to an enlisted man in the Fifth Illinois Cavalry for $75. I do not know the man's name that purchased the horse, but I have seen the animal several times since he sold him. While our company was on picket duty at the Marshall place, on the Benton Road, heretofore referred to, one Andrew J. Bray, a private soldier of H Company, took from a citizen residing about 4 miles north of the Marshall place, a large bay gelding. Bray had the horse in his possession about five or six days, at the end of which time he sold the said horse to Lieutenant-Colonel Hammond, assistant adjutant-general of the Fifteenth Army Corps, for the sum of $25. The money was paid by Lieutenant-Colonel Hammond to private Bray in my presence and in the presence of Lieutenant Fitch, Captain Troy, and several members of the company.

Interrogatory 4. Do you know of Captain Troy's capturing a gray horse near the Rolling Fork of Deer Creek and selling him to one John H. Peters, captain of B Company, Fourth Regiment of Iowa Cavalry, for the sum of $75?

Answer to interrogatory 4. I do not.

Interrogatory 5. Do you know of false musters having been made by Captain Troy or any of his lieutenants, for the benefit of himself or lieutenants, or either or any of them? If you know, state fully all the circumstances.

Answer to interrogatory 5. The only false muster that I am cognizant of as having been made, is in this way: Since the company was first mustered into the service, and for more than two years, Captain Troy has employed as his private servant one Private Levi T. Logan, of said Company H, and during the time mentioned said Logan has been excused from duty with the company, has never been compelled to stand guard, or perform picket duty, or go on a scout, or perform any kind of duty unless it suited his fancy. On the pay-account of the captain some fictitious name, or the name of some person not present with the command, has been inserted, in order that he might draw the pay and allowances of a private servant. He has in this way made false muster, or a false certificate, ever since he has been in the service.

Interrogatory 6. Do you know of Captain Troy's harboring an old friend of his who left Iowa fearing the draft, and was an abetter with him in dealing in contraband horses, mules, trunks, clothing, &c.? If you have any knowledge state the same fully.

Answer to interrogatory 6. I know a man by the name of Mr. Whitmore, from Chickasaw County, Iowa, who boarded with Captain Troy for two or three months. He came to the command at Helena on or about the 1st of May last, and remained with Captain Troy until after the surrender of Vicksburg. I cannot swear that he left Iowa to escape the draft. On or about the 25th of last June, and while the regiment was encamped on Bear Creek, 7 miles northwest of Messenger's Ferry, near Black River, the said Mr. Whitmore purchased, with the knowledge and consent of Captain Troy, a roan mare of Martin A. Bigger, a private of H Company. I don't know how much Mr. Whitmore gave for the horse. When Mr. Whitmore left the company, after the surrender of Vicksburg, he took the horse with him. I know nothing about his dealing in mules, trunks, clothing, &c.

Interrogatory 7. What kind of a reputation did Mr. Whitmore have in the company: and what did you think of him?

Answer to interrogatory 7. He had a very bad reputation in the company. I considered him an unprincipled man and a great scoundrel.

Interrogatory 8. Do you know and can you state any other illegal transactions in

which Captain Troy has been engaged where he has defrauded the United States Government? If you do, state them fully.

Answer to interrogatory 8. I do not.

Interrogatory 9. Do you know of anything or can you give any further information that would be of benefit or assist the prosecution in this case? If you know of anything or can state anything further, do so fully and freely.

Answer to interrogatory 9. I do not; I cannot.

SAMUEL M. LEGGE.

Subscribed and sworn to before me this 22d day of January, 1864.

WM. E. STRONG,
*Lieut. Col. and Assist. Insp'r Gen'l Seventeenth Army Corps.*

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## Exhibit B.

*Deposition of Private Levi T. Logan, H Company, Fourth Regiment Iowa Cavalry.*

State of Mississippi,
*Warren County, ss:*

Before me, William E. Strong, leutenant-colonel and assistant inspector-general Seventeenth Army Corps, appeared Private Levi T. Logan, H Company, Fourth Regiment Iowa Cavalry, and in a cause of the United States *vs.* Capt. S. S. Troy, Company H, Fourth Iowa Cavalry, referred to me by Lieutenant-Colonel Bingham, chief quartermaster of the Army and Department of the Tennessee, for investigation and report, after having been first duly sworn by me, deposed as follows:

Interrogatory 1. What is your name; rank; to what company and regiment do you belong?

Answer to interrogatory 1. My may is Levi T. Logan. I am a private soldier in H Company, Fourth Regiment Iowa Cavalry.

Interrogatory 2. Do you know Captain Troy; and, if so, how long have you known him?

Answer to interrogatory 2. I am well acquainted with Captain Troy; have taken care of horse for nearly two years. I have known him since the 11th day of January, 1862.

Interrogatory 3. Do you know, and have you any knowledge, whether Captain Troy, of H Company, Fourth Iowa Cavalry, has ever dealt in contraband horses, buying and selling them, or permitting his men to trade government horses for those that were not?

Answer to interrogatory 3. In the month of April, 1863, and while the Fourth Iowa Cavalry was at Helena, I traded a government horse, which was in the possession of one Charles Fitch, a private soldier of H Company, Fourth Iowa Cavalry, with the knowledge and consent of Captain Troy and at his request, for a sorrel horse, about four years old, the property of one John Carpenter, Company F, Fifth Kansas Cavalry. I received from Carpenter $15 boot-money, half of which I retained myself and gave the balance to Fitch. The horse which I traded off was very fractious, had never been properly bitted, and there was no one in the company who could ride him. I also traded, about the same time, perhaps ten days previous to this, and with the knowledge and consent of the captain and at his request, a government horse in the possession of Sergeant Miller, of said H Company, for a horse owned by a private soldier of the Fifth Kansas Cavalry. I received in this trade $30 boot-money, half of which I retained for myself and gave the balance to Sergeant Miller. These are the only cases that I know of where government horses have been sold or traded with the knowledge or consent of the captain. On the 14th day of May, and while our regiment, the Fourth Iowa Cavalry, was at Jackson, Miss., one Corporal Chandler, of H Company, captured a large bay gelding, about twelve years old. About two weeks subsequent to this, Corporal Chandler traded the said captured horse with Captain Troy for another bay gelding, somewhat smaller than his own, and received from the captain $15 boot-money. About six weeks subsequent to this time, I bought the horse of Captain Troy, and paid for him $75. I sold the horse the same day to Lieutenant Fitch for $75. The horse is now in the possession of and owned by Lieutenant Fitch, of H Company. About the middle of last July, Corporal Chandler sold the horse which he had received from Captain Troy to a member of the Fifth Illinois Cavalry for the sum of $50.

On or about the 1st of June, 1863, while our company was on picket duty at the Marshall place, 8 miles east of Vicksburg, Captain Troy purchased of Andrew A. Gibson one gray mare and paid for her $15. Captain Troy kept her about five months, and I then sold her to a lieutenant in the Fifth Illinois Cavalry for the sum of $35, which said amount I paid over to Captain Troy.

At about the same time above referred to, and at the same place, Andrew J. Bray, a private soldier of Company H, took from a citizen residing about 4 miles north of the Marshall place, a large bay gelding. Bray had the horse in his possession about one week, and then sold him to Lieutenant-Colonel Hammond, assistant adjutant-general of the Fifteenth Army Corps, for the sum of $25. I was not present when Lieutenant-Colonel Hammond took the horse away, but Bray told me that he received from Lieutenant-Colonel Hammond the price above specified.

Interrogatory 4. Do you know anything about a certain gray horse captured from the enemy by Captain Troy in the month of June, 1863, on the Rolling Fork of Deer Creek; and have you any knowledge whether the Captain ever sold the said horse, and, if so, to whom he sold him, and the amount of money which the Captain received for him? If you have any knowledge about the transaction, state the same fully.

Answer to interrogatory 4. I know something about the horse referred to, although I was not present when the horse was captured. I was acting as orderly for Brig. Gen. W. S. Smith. In the latter part of June I returned to the company, and I then saw, for the first time, the said gray horse. The horse was in the possession of Captain Troy, who was riding him. I understood from members of the company that Sergeant Blazier, of Company H, captured the horse, and that the captain afterwards purchased him. Do not know how much was paid for the horse. Sergeant B. told me himself that he captured the horse and sold him to Captain Troy. Some three days subsequent I saw Captain Peters, of Company B, Fourth Iowa Cavalry, riding the gray horse. I have no knowledge that Captain Peters bought the horse outright, but it was generally supposed by the company he had bought and paid for him. The captain informed me that he gave the horse to Captain Peters. On the 1st day of August I went home on a furlough, and when I left Captain Peters had the horse in his possession. I returned to my company on the 28th of August. During my absence Captain Peters had been ordered north on recuiting service, and had taken the horse with him. I heard an officer say that Captain Peters sold the horse in Memphis, and that before he sold him he took an oath that he had paid Captain Troy the sum of $75 for the horse.

Interrogatory 5. If it was necessary, could you state other transactions in which captain Troy was engaged, whereby the Government of the United States was defrauded? I refer to cases similar to those heretofore recited by you.

Answer to interrogatory 5. I could.

Interrogatory 6. Do you know whether Captain Troy has ever made false musters for the benefit of himself or lieutenants?

Answer to interrogatory 6. I do not.

Interrogatory 7. Have you not been employed by Captain Troy as his private servant ever since the company to which you are attached was first organized?

Answer to interrogatory 7. I have not. I have taken care of the captain's horse nearly all the time since the regiment was mustered into service. Have never supposed I was acting as his private servant.

Interrogatory 8. Have you not been excused from guard, picket, and fatigue duty, and from scouting, &c., all the time you were taking care of the captain's horses?

Answer to interrogatory 8. I have not. I have performed the same duties as other members of the company nearly all the time I have been in the service, except picket duty. From this I have generally been excused. I have occasionally been excused from all kinds of duty.

Interrogatory 9. Has Captain Troy employed any of the time since you have been with him a private servant not a soldier?

Answer to interrogatory 9. He has. Since I have been with Captain Troy he has to my personal knowledge employed at least half a dozen different private servants to wait upon him, cook, &c. The first year the captain was in the service he employed a boy from Iowa by the name of George Patrick, a citizen. Since that time the captain's servants have been colored men.

Interrogatory 10. Have you any knowledge that Captain Troy has ever made a false certificate on the pay account, or that he has ever inserted, in the blank form on pay account provided for description of private servant, a fictitious name, or the name of some person not present, in order that he might draw pay and allowances of a private servant not actually employed by him?

Answer to interrogatory 10. I have not.

Interrogatory 11. Do you know anything about Captain Troy's harboring an old friend of his by the name of Whitmore, who left Iowa fearing the draft, and was an abettor with him in dealing in contraband horses, mules, trunks, clothing, &c.? If you know of anything of interest about them, state the same fully.

Answer to interrogatory 11. On or about the 1st of April, 1863, and while our regiment was at Helena, a man by the name of Whitmore came to the company and brought with him from Iowa deserter belonging to Company H. Mr. Whitmore was from Chickasaw County, Iowa, and was an old acquaintance of Captain Troy. I never considered Captain Troy and Whitmore to be very warm friends. On the con-

trary, I had good reasons believing that the captain disliked him very much. When Whitmore first joined the company, the captain told me to look out for my "pocket-book," and gave me to understand that he was a thief and rascal. A large number of the company knew him at home, and none of these men would ever associate with or have any dealings with him. This man Whitmore remained with the company until after the surrender of Vicksburg. I know the captain was very much annoyed at being compelled to harbor him, and heard the captain say frequently that he wished Whitmore would leave, only he disliked to order him away. I know the captain and Whitmore never had any deal together, and never bought or sold together any contraband horses, mules, trunks, clothing, &c. But I do know that Whitmore was engaged all the time he was with the command in stealing horses and mules, and in fact anything of value he could lay his hands on, and selling the same for money. He was also engaged in buying and selling contraband horses and mules, and carried on a pretty extensive business. I have seen him have in his possession silver ware, teaspoons, cups, &c., and ladies' jewelry, and I could cite numerous instances where he stole horses outright and sold them, and where he bought property contraband of war and sold the same. Whitmore returned to Iowa about the middle of July.

Interrogatory 12. Can you state anything further that would be of benefit or assist the prosecution in this case? If you can, do so freely and fully.

Answer to interrogatory 12. I cannot.

LEVI T. LOGAN.

Subscribed and sworn to before me this 24th day of January, A. D. 1864.

WM. E. STRONG,
*Lieut. Col. and Asst. Inspr. Genl. 17th Army Corps.*

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## Exhibit C.

*Deposition of John Townsend, private of H Company, Fourth Regiment Iowa Cavalry.*

STATE OF MISSISSIPPI,
*Warren County, ss:*

Before me, Wm. E. Strong, lieutenant-colonel and assistant inspector-general Seventeenth Army Corps, appeared Private John Townsend, H Company, Fourth Regiment Iowa Cavalry, and in a case of the United States *vs.* Capt. S. S. Troy, Company H, Fourth Iowa Cavalry, referred to me by Lieutenant-Colonel Bingham, chief quartermaster of the Army and Department of the Tennessee, for investigation and report, after having first been duly sworn by me, deposed as follows:

Interrogatory 1. What is your name and rank, and to what company and regiment do you belong?

Answer to interrogatory 1. My name is John Townsend. I am a private soldier, and have been the acting veterinary surgeon of the Fourth Regiment of Iowa Cavalry for nearly one year. I am attached to H Company of said regiment.

Interrogatory 2. Do you know Captain Troy, of H Company, of the Fourth Regiment of Iowa Cavalry; and, if so, how long have you known him?

Answer to interrogatory 2. I have known him for two years; ever since the company was first organized.

Interrogatory 3. Have you any knowledge that Captain Troy has ever dealt in contraband horses, buying and selling them; or trading or permitting his men to trade government horses for those that were not? If you have any such knowledge, state the same fully.

Answer to interrogatory 3. I do. On or about June 1, 1863, while our company was on picket duty on the Marshall place, on the Benton Road, near Vicksburg, Captain Troy purchased of Andrew A. Gibson, a private of H Company, a gray mare about nine years of age, and paid for her $15. The captain had the mare in his possession several months, after which time the mare disappeared. I do not know that the captain actually sold the mare and got the money for her, but it was generally understood by the company that she had been sold. I have heard the boys say that the mare was sold to the Fifth or Eleventh Illinois Cavalry. I have never seen the mare since she left the company.

On the 14th day of May, while our regiment (Fourth Iowa Cavalry) was in Jackson, Miss., Corporal L. P. Chandler, of Company H, captured a large bay gelding—took the animal out of a livery stable. I cannot swear that Chandler traded the horse off, but I heard different members of H Company say that he had done so, and that he had traded with Captain Troy for another bay gelding some smaller than his own. I understood that the captain gave Chandler permission to sell or trade the horse which he let him have, as he might choose. I afterwards heard that Chandler sold the horse to a member of the Fifth Illinois Cavalry. Do not know how much he

received. Never heard any one say. A short time after this Captain Troy sold or traded the horse which he received from Chandler to Lieutenant Fitch, of Company H. On or about the 26th day of April, 1863, while our regiment was at Helena, Ark., Captain Troy purchased of a private soldier in H Company a contraband horse. Do not know what the captain paid for her. The horse was offered to me for $15 before the captain bought. On or about the 30th day of April, 1863, the captain sold the horse to Lieutenant Dillon, of Company C, for $80 or $85.

Interrogatory 4. Do you know of Captain Troy's capturing a gray horse near the Rolling Fork of Deer Creek and selling him to Captain Peters, of B Company, for the sum of $75 or any other sum?

Answer to interrogatory 4. I was not on the scout when the horse was captured, but I saw the horse when brought into camp. Sergeant Blazier, of H Company, captured the horse. A short time after this Sergeant Blazier let the captain have him. Cannot swear that he sold or traded him. About a month after this the horse was transferred to Captain Peters, of Company B. Do not know whether he bought or traded for him, or whether Captain Troy gave him to Peters; but it was understood by every one that knew anything about the horse that Peters had purchased him and paid $75.

In August three regiments of cavalry, under Col. E. F. Winslow, our regiment among the number, were ordered to proceed to Memphis by the way of Granada, which we did. While we were at Memphis Captain Peters was ordered north on recruiting service. Our regiment left Memphis to return to Vicksburg two days prior to Captain Peters leaving Memphis for the north. He kept the horse heretofore referred to with him. Did not send him down with the company. I have heard a number of men in Company B and Company H say that Captain Peters took the horse to Iowa with him. Could not swear that he did or did not.

Interrogatory 5. Do you know of false musters having been made by Captain Troy or any of his lieutenants for the benefit of himself or lieutenants? If you know, state fully all the circumstances.

Answer to interrogatory 5. I do not.

Interrogatory 6. Do you know Levi T. Logan, of H Company; and, if so, how long have you known him?

Answer to interrogatory 6. I do; I have known him two years.

Interrogatory 7. Has not Logan been employed by Captain Troy as his private servant ever since he has been in the service, and has not Logan been excused from all kinds of duty with the company since he has been so employed?

Answer to interrogatory 7. He has taken care of the captain's horses nearly all of the time he has been in the service. I do not know that he has been his private servant. Logan has stood guard occasionally, and would sometimes go on a big scout when he thought there was going to be a good chance for horses.

Interrogatory 8. Has Captain Troy had in his employ, since you have known him, a private servant not a soldier?

Answer to interrogatory 8. He has at different times since he has been in the service had private servants that were not soldiers. A young fellow by name of George Patrick came with the company when we left the State, and was employed by the captain for about a year. After this he employed colored men.

Interrogatory 9. Do you know of Captain Troy's harboring an old friend of his who left Iowa fearing the draft and was an abettor with him in dealing in contraband horses, mules, trunks, clothing, &c.?

Answer to interrogatory 9. I know a man by the name of Whitmore that messed with and remained with the captain from the time we left Helena until after the surrender of Vicksburg. I do not *know* whether he was an old friend of the captain or not. From appearances, I should judge they were very warm friends. I do not know that Whitmore left Iowa fearing the draft. I know that Whitmore bought and sold, and stole, traded, and sold contraband horses and mules; and that he did all these things with the knowledge and consent of the captain. Whitmore had the reputation of being a very bad man. I always thought he would steal anything he could lay hands on that would sell for money, and I have no doubt but that he did.

Interrogatory 10. Do you know and can you state any other illegal transactions in which Captain Troy has been engaged where he has defrauded the Government of the United States?

Answer to interrogatory 10. I do not; I cannot.

Interrogatory 11. Do you know of anything, or can you give any further information that would be of benefit, or assist in the prosecution of this case? If you know anything, or can state anything further, do so fully and freely.

Answer to interrogatory 11. I do not; I cannot.

JOHN TOWNSEND.

Subscribed and sworn to before me this 24th day of January, 1864.

WM. E. STRONG,
Lieut. Col. and Asst. Inspr. *Genl. 17th Army Corps.*

## EXHIBIT D.

*Deposition of Col. E. F. Winslow, commanding cavalry force Fifteenth Army Corps.*

STATE OF MISSISSIPPI,
*Warren County, ss:*

Before me, William E. Strong, lieutenant-colonel and assistant inspector-general Seventeenth Army Corps, appeared E. F. Winslow, colonel commanding cavalry forces Fifteenth Army Corps, and in a certain cause of the United States *vs.* Capt. S. S. Troy, Company H, Fourth Regiment Iowa Cavalry, referred to me by Lieutenant-Colonel Bingham, chief quartermaster of the Army and Department of the Tennessee, for investigation and report, after being first duly sworn by me, deposed as follows:

Interrogatory 1. What is your name, rank, and regiment?

Answer to interrogatory 1. My name is Edward F. Winslow. I am colonel of the Fourth Iowa Cavalry.

Interrogatory 2. Do you know Samuel S. Troy, captain of Company H, Fourth Iowa Cavalry?

Answer to interrogatory 2. I am acquainted with Captain Troy.

Interrogatory 3. Do you know that he has ever dealt in property belonging to the United States, or property contraband of war? If so, state the circumstances.

Answer to interrogatory 3. I know that he captured from the enemy on Deer Creek, Mississippi, in the month of June, 1863, a certain gray horse, which horse by said capture became the property of the United States. Captain Peters, Company B, Fourth Iowa Cavalry, informed me in conversation that he had purchased said horse, and did use it for the space of two months thereafter, and did take said horse from Memphis, Tenn., with the intention of taking him to his home in Iowa as his private property.

Interrogatory 4. Who sold this horse to Captain Peters?

Answer to interrogatory 4. In accordance with general instructions from Lieutenant-Colonel Sevan, then in command of the regiment, this horse, like other captured horses, was retained by Captain Troy as government property, and was transferred to Captain Peters with the knowledge of said Troy. I do not know who sold the horse.

Interrogatory 5. Can you give any further information that would be of benefit to the prosecution in this case? If you can, state the same fully.

Answer to interrogatory 5. I cannot.

E. F. WINSLOW.

Subscribed and sworn to before me this 22d day of January, A. D. 1864.

WM. E. STRONG,
*Lieut. Col. and Asst. Inspr. Genl. Seventeenth Army Corps.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 840.

# IN THE SENATE OF THE UNITED STATES.

JULY 18, 1882.—Ordered to be printed.

Mr. MILLER, of California, from the Committee on Foreign Relations, submitted the following

# REPORT:

[To accompany H. Res. 209.]

*The Committee on Foreign Relations, to whom was referred the joint resolution (H. Res. 209) to authorize the President of the United States to call an international conference to fix on and recommend for universal adoption a common prime meridian to be used in the reckoning of longitude and in the regulation of time throughout the world, have considered the same, and respectfully report:*

That they have examined all the memorials and papers referred to them in relation to a commission for establishing a zero of longitude and a standard of time throughout the globe.

These papers present two principal phases:

First. The establishment of a prime meridian from which longitude shall be reckoned for all sea charts, which shall therefore have a quality of universal usage.

Second. Standard time for the use of railroads, &c., through different countries.

The committee recognize the practical benefits to be derived from having a common zero of longitude for the charts of all commercial nations, and believe that in the course of years a single line of departure would be adopted. Yet it seems very important that its establishment should be hastened by a convention of delegates from the various commercial nations. It would appear as necessary as the universal reckoning of latitude from the equator. At all events, a question which has so long occupied the attention of men of science, and which provokes earnest discussion of its practical phases may as well be settled. The promulgation of such a prime meridian would be analogous to the promulgation of the Gregorian calendar, giving the smaller countries an opportunity to avail themselves of it without compromising their dignity.

The committee recognize the fact that most of the great commercial nations adopt the meridian of Greenwich as the zero of longitude; but that the longitude is reckoned east and west therefrom to the 180th meridian. This single circumstance involves the liability to those navigators near the zero and near the 180th degree of making in their calculations a mistake in sign which may place them on the wrong side of those meridians. The gravity of this point is appreciated when we remember that the zero of longitude through Greenwich crosses the track of an immense commerce along the dangerous coasts of Western Europe.

The committee therefore feel the advisability of counting the longi

tude through 360 degrees or 24 hours from the prime meridian, and thus avoid the possibility of falling into the foregoing errors.

A source of danger to navigation in the use of several prime meridians is, where two vessels signal each other under stress of weather, and the one which has had no observation for longitude receives and uses a longitude from the other vessel based upon a different zero from her own, and may proceed to her destruction. The same may happen to a vessel approaching a strange coast line.

In order to ascertain generally what commercial nations are using a common meridian, the committee have obtained from the charts at the office of the Coast and Geodetic Survey the following enumeration:

*Countries using the Greenwich meridian for charts.*

Great Britain, with India, Australia, Dominion of Canada, British Columbia, and all the dependencies, together with survey of dangers, harbors, &c., all over the world.

The United States.

Germany (the topographical maps use Berlin, 13° 23′ 53″ east of Greenwich).

Russia (also uses Paris, 2° 20′ 15″ east of Greenwich; St. Petersburg, 30° 20′ east of Greenwich; but gives Greenwich preference).

The Netherlands (also uses Amsterdam, 4° 53′ east of Greenwich).

*Per contra.*

France uses Paris, 2° 20′ 15″ east of Greenwich.

Spain uses San Fernando, 6° 20′ east of Greenwich.

Denmark uses Copenhagen, 12° 34′ east of Greenwich.

Portugal has no strictly geographical charts.

Italy, no specimen of sea charts. On the topographical maps she uses Turin, Milan, and San Fernando.

Upon the consideration of adopting a universal standard of time for all countries the committee believe that the acceptance of such a proposition by any convention is extremely doubtful. At different periods there have been so many chimerical schemes proposed, and no thoroughly practical one suggested, that the committee cannot urge this as a reason for supporting the recommendation of a convention. The great railroad corporations of each country will naturally solve this problem for themselves, with, perhaps, local legislation; but the committee believe that the adoption of numbering the hours from 0 at the prime meridian, or zero of longitude to twenty-four, consecutively, will afford a basis of local action, and hasten the establishment of common railroad time in the different countries.

Beyond the demands of the railroad traffic it seems absolutely necessary that local time shall be retained, because of the many industries and trade customs and legal questions involved. It would appear to be as difficult to alter by edict the ideas and habits of the people in regard to local time as to introduce among them novel systems of weights, measures, volumes, and money.

Upon a careful weighing of all the evidence before them, the committee believe that the question of establishing simply a prime meridian for all nations, and reckoning the longitude therefrom through 360 degrees and through twenty-four hours, consecutively, is of such practical importanc to commerce and navigation as to justify the calling of the proposed convention, and they therefore recommend the passage of the joint resolution with the amendment agreed upon by the committee.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 841.

# IN THE SENATE OF THE UNITED STATES.

JULY 20, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1411.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1411) granting a pension to Jacob Luskey, having examined the same, report as follows:*

That the facts are correctly stated in House report No. 787. The report is as follows:

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 1411) granting an increase of pension to Jacob Luskey, have considered the same, and report:*

The said Luskey is now seventy-two years of age, and has served in the United States Army and Navy for more than twenty-five years. He was engaged in the Seminole war, in the naval attack on Vera Cruz, and participated in the march to the city of Mexico from Vera Cruz.

He now receives a pension at the rate of $6 per month, which was conferred on him, not for disability received in the service, but because of the great number of years he served his country. He is an inmate of the United States Naval Asylum at Philadelphia, and separated from his wife and family.

He states that while in the service at the navy-yard at Washington, D. C., in June, 1842, he received a severe injury to his leg and other portions of his body from the accidental explosion of a shell. The circumstances of the accident and injury of claimant are substantiated by the evidence of Lieutenant Boutwell, late of the United States Navy.

Dr. A. W. Miller, of Philadelphia, testifies that claimant is entirely incapacitated for obtaining his subsistence by manual labor from effects of injuries received in the United States Navy in June, 1842, at the explosion referred to above.

The claimant asks an increase of pension, so that he may be enabled to leave the asylum and join his aged wife, and with her and in her society spend the short remnant of his life.

In view of his long service, and his great age, and the pathetic appeal the old sailor makes, the committee think his prayer should be granted, and recommend the passage of the bill increasing the pension to $15 per month.

Your committee cannot agree with the conclusions reached in said report. The claimant does not receive the pension now allowed him on account of any disability received in the service, and your committee are of the opinion that it would be establishing a bad precedent to grant the increase asked in the bill, as it would lead to numerous applications in cases similar in character.

Your committee report adversely, and recommend the indefinite postponement of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 842.

# IN THE SENATE OF THE UNITED STATES.

JULY 20, 1882.—Ordered to be printed.

Mr. GORMAN, from the Committee on the District of Columbia, submitted the following

# REPORT:

[To accompany bill H. R. 2402.]

*The Committee on the District of Columbia, to whom was referred the bill H. R. 2402, have considered the same, and respectfully report:*

That they have examined the said bill, and the facts embodied in the report of the Committee on the District of Columbia of the House of Representatives thereon, which report is hereby adopted as the report of your committee and made a part hereof, and for the reasons stated therein recommend that the bill do pass.

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[House Report No. 1271.—47th Congress, 1st session.]

Mr. URNER, from the Committee on the District of Columbia, submitted the following report (to accompany bill H. R. 2402):

*The Committee on the District of Columbia, to whom was referred the bill (H. R. 2402) to quiet title to certain lands in Washington, D. C., respectfully report:*

That they have considered said bill, and find from the testimony submitted that the land mentioned in the bill was the property of Robert Brent, who in 1819 was Paymaster-General of the United States Army. Upon the settlement of his accounts he was found to be largely indebted to the government, and to secure the payu ent of his indebtedness to the United States he made an assignment of all his property, including the land in question, to George Graham, Joseph Pearson, and Robert Y. Brent, jr., as trustees, in trust to sell the same and pay the proceeds to the United States. He also executed a will, in which he named the same persons as trustees, with somewhat similar trusts.

After the death of said Brent the United States instituted proceedings in equity to enforce the trusts of said deed, and a decree was passed appointing said Graham, Pearson, and Brent, jr., trustees to sell said property.

On the 1st of May, 1822, Joseph Pearson and Robert Y. Brent, the surviving trustees, sold said property at public auction, at which sale P. Mauro acted as auctioneer.

On the 18th of June, 1823, the said surviving trustees reported said sales to the court, and accompanied their report with a list of the property sold, in which it appears that squares 710, 711, 672, 670, 671, and a large quantity of other land, was sold to Stephen Pleasanton, and in the report the trustees say:

"That the portion of the said property which appears to have been struck off to Stephen Pleasanton was purchased by him, the said Pleasanton, for the use of the United S ates."

An order *nisi* was passed upon said report on the 18th of June, 1823, but nothing further appears to have been done until the year 1849, when, on the 23d day of May, an order was passed by the court to this effect:

"That the sales reported by the trustees in this cause to Stephen Pleasanton, agent of the complainants (the United States), be and the same are hereby ratified and confirmed, and the surviving trustee, Robert Y. Brent, is hereby directed to convey the property so sold to the said complainants or their assigns."

The said Robert Y. Brent, presumably in the execution of the above order, on the 30th day of September, 1850, executed a deed of lots 10, 11, and 12, in square No. 551, and squares Nos. 510, 711, 670, 671, and 672, to Catharine Pearson, Eliza W. Pearson, Josephine Jay, and Wm. Gaston Pearson, who are described as "the heirs at law and devisees of Joseph Pearson, deceased." The following is a copy of said deed:

This indenture, made this thirtieth day of September, in the year of our Lord one thousand eight hundred and fifty, between Robert Y. Brent, trustee, of the first part, and Catharine Pearson, Eliza W. Pearson, Josephine Jay, and William Gaston Pearson, of the second part, all being of the county of Washington, in the District of Columbia, witnesseth:

Whereas the hereinafter described premises were heretofore purchased at a sale of the real estate of Robert Brent, by Joseph Pearson, deceased, and the parties of the second part aforesaid are entitled to and desire a conveyance thereof to them, as the heirs at law and devisees of said Joseph Pearson, from the said party of the first part, as the trustee of the last will and testament of Robert Brent, aforesaid:

Now, this indenture witnesseth that the said party of the first part, for and in consideration of the premises, and of the sum of one dollar to him in hand paid by the said parties of the second part before the ensealing and delivery of these presents, receipt of which sum of money is hereby acknowledged, hath bargained, sold, transferred and conveyed, and doth by these presents bargain, sell, transfer, and convey unto the said parties of the second part, their heirs and assigns, all those pieces of ground situate and lying in the city of Washington, in the county aforesaid, and being lots Nos. ten (10), eleven (11), and twelve (12), in square No. five hundred and fifty-one (551), also squares Nos. seven hundred and ten (710), seven hundred and eleven (711), six hundred and seventy (670). six hundred and seventy-one (671), and six hundred and seventy-two (672), with the improvements, rights, privileges, and appurtenances to the said granted premises belonging or appertaining:

To have and to hold the same unto and for the only use and behoof of the said parties of the second part, their heirs and assigns forever, according to their respective rights at law, and under the last will and testament of Joseph Pearson, aforesaid.

In testimony whereof the said Robert Y. Brent hath hereunto set his hand and seal on the day and year first hereinbefore written.

R. Y. BRENT, *Trustee.* [SEAL.]

Signed, sealed, and delivered in our presence:
T. C. DONN,
B. K. MORSELL.

DISTRICT OF COLUMBIA,
*County of Washington sct:*

On this thirtieth day of September, in the year of our Lord one thousand eight hundred and fifty, before the subscribers, two of the justices of the peace in and for the county aforesaid, personally appears Robert Y. Brent, party to the aforegoing indenture, and acknowledged the same to be his act and deed.

Taken & certified by

B. K. MORSELL, *J. P.*
T. C. DONN, *J. P.*

Recorded in liber J. A. S., vol. 22, f. 9, one of the land records of the District of Columbia.

It will be observed that the grantor, who was a co-trustee with Joseph Pearson in making the sale, recites in the deed:

"Whereas the hereinafter described premises were heretofore purchased at a sale of the real estate of Robert Brent by Joseph Pearson, deceased, and the parties of the second part aforesaid are entitled to and desire a conveyance thereof to them as the heirs at law and devisees of said Joseph Pearson, from the said party of the first part, as the trustee of the last will and testament of Robert Brent aforesaid."

The deed professes to have been executed by Robert Y. Brent, "as the trustee of the last will and testament of Robert Brent," when the sale had not been made by the trustees under the will, but by the trustees under the decree, and as such Robert Y. Brent was directed by the court to convey.

The deed recited was considered invalid, but nothing further was done in the case until the 15th day of December, 1857, when another order was passed by the court as follows:

"Ordered and decreed, that the sale heretofore reported by the trustees in this cause to Joseph Gales, jr., be, and the same is hereby, ratified and confirmed, and it is further ordered that Philip Barton Key be, and is hereby, appointed trustee to convey the said property to the purchaser, and also to convey to the respective purchasers referred to in the order passed on the 23d of May, 1849, the respective parcels of land therein

referred to, the trustee, Robert Y. Brent, mentioned in said order, having departed this life, without executing such conveyances."

On the 24th of March, A. D. 1858, Philip Barton Key, as trustee, executed a deed of all said land, besides numerous other tracts bought by said Pleasanton as agent of the United States, to the United States. It would seem that this deed was prepared from the report of sales and the schedule attached thereto, and the conveyancer had no knowledge of any agreements with reference to or any disposition of any of the property other than what the report disclosed, and actually conveyed to the United States other lots besides those in question to which the United States were not entitled. Solicitor Hillyer, in a letter dated May 11, 1859, says:

"I take the occasion to say, in my opinion, Mr. Key made a mistake in including in the deed to the United States the lots above described in square No. 327, &c."

By the deed of Key the legal title to the squares in question became vested in the United States, where it now is; but it is claimed by the parties for whose relief the legislatiou sought is desired, that while the sale of said land by the trustees was nominally made to Stephen Pleasanton as agent of the United States, yet so far as the land in question was concerned, viz, squares 670, 671, 672, 710, and 711 that was in truth bought for Joseph Pearson who, being one of the trustees, could not legally buy at his own sale. In support of this claim the following additional testimony has been produced.

1st. A memorandum of P. Mauro, auctioneer, made at the time of the sale, to wit, May 1, 1822, which is as follows:

| | |
|---|---|
| 'Square 551, lots 10, 11, 12, Mr. Pleasanton, 30,327, at 2 mills per square foot. | $60 65 |
| Half of square 710 and 711 & mill, 255,282 square feet, to Mr. Pleasanton.. | 3,000 00 |
| Half of square 710 and 711, 255,282 square feet, at 2¼ mills, Pleasonton.... | 702 02½ |
| Square No. 672, 386,000 square feet, 2 mills, sold to Mr. Pleasanton ..... | 772 00 |
| Square No. 670, containing 100,370 square feet, at 2½ mills, sold to Mr. Pleasanton..... | 250 92½ |
| Square No. 671, containing 98,030 square feet, at 2 mills, sold to Mr. Pleasanton..... | 196 06 |
| | 2,281 66½ |

Sold at public auction May 1, 1822, the real property belonging to the estate of Robert Brent, by P. Mauro, auctioneer.

"(On the margin:) "This for Mr. Jos. Pearson."

2d. Additional memorandum aud certificate from P. Mauro, auctioneer, as follows:

"Jos. Pearson bot. at auction May 1, 1822, the following property belonging to the estate of the late R. Brent, esq., deceased:

| | |
|---|---|
| Sqr. 551, lots 10, 11, & 12, 30,327 sq. ft., @ 2¼ ms ..... | $60 65½ |
| Half of square 710 & 711, 255,282..... | 3,000 00 |
| " " " " 255,282, 2¼ ..... | 702 02½ |
| Square No. 672, 386,000, 2 ms ..... | 772 00 |
| " 670, 100,370, 2½ ms ..... | 259 92½ |
| " 671, 98,030, 2 ms..... | 196 06 |
| | 4,881 66½ |

"The above is a true copy from the original record, July 3, 1835.

P. MAURO, *Auct'r.*"

3d. Letter from Thomas Swann, attorney for the United States, to S. Pleasanton, dated October 21, 1823, of which the following is a copy:

"WASHINGTON, D. C., *October* 21, 1823.

"SIR: In the sales of the property of Mr. Brent, I understand that the mill and back-property attached to it was reported to have been sold to you, with a view that it should be conveyed to you, and by you to Mr. Pearson, who is the real purchaser.

"Mr. Pearson informs me that you do not wish your name to be used in this matter, but at the same time you are content that the sales should stand for the benefit of Mr. Pearson. If you should be willing that the sales should stand, you might direct the conveyance to be made to any person that Mr. Pearson might direct, and the title in that way might, I presume, be made safe as to him, or if you should prefer it, a re-sale might be made of the property.

"I am, with very great respect, your obedient servant,

"THO. SWANN.

"To S. PLEASANTON, Esq.,
"*Washington.*"

4th. An unexecuted deed, now on file in Solicitor's office of Treasury Department, prepared by Hon. Walter S. Cox, now associate justice of the District of Columbia,

together with a letter from Judge Cox to Hon. John C. Clarke, solicitor, requesting the execution of the deed, dated September 14, 1850. The following is a copy of the deed prepared by Judge Cox, as also his letter:

"This indenture made this —— day of ——, in the year one thousand eight hundred and fifty, between Robert Y. Brent, surviving trustee of the will of Robert Brent, deceased, of the first part, John C. Clarke, Solicitor of the Treasury of the United States of the second part, and Catharine Pearson, Eliza Pearson, Josephine Jay, and Gaston Pearson of the third part, witnesseth:

"Whereas at a public sale of property of the late Robert Brent, the hereinafter described property was purchased in the name of S. Pleasanton, agent of the United States, but in fact for Joseph Pearson, one of the trustees of Robert Brent, aforesaid, and since deceased, and the parties of the third part hereto are the heirs at law and devisees of said Joseph Pearson, and as such are entitled to a conveyance of the premises aforesaid, in evidence whereof the said John C. Clarke will affix his signature hereto: Now, therefore,

"This indenture witnesseth that the party of the first part, for and in consideration of the premises and the sum of one dollar to him in hand paid by the parties of the third part before the ensealing and delivery of these presents, receipt of which sum of money is hereby acknowledged, hath bargained, sold, transferred and conveyed, and doth by these presents bargain, sell, transfer, and convey unto the said parties of the third part, their heirs and assigns, all those pieces of grounds situate and lying in the city of Washington, in the county aforesaid, and described as follows, viz:

"Lots Nos. ten (10) eleven (11), and twelve (12), in square No. five hundred and fifty-one (551); also, squares Nos. six hundred and seventy (670), six hundred and seventy-one (671), six hundred and seventy-two (672), seven hundred and ten (710), and seven hundred and eleven (711), with the improvements and appurtenances, to have and to hold the same unto and for the only use and behoof of the said parties of the third part, their heirs and assigns, according to their respective rights at law and under the last will and testament of Joseph Pearson aforesaid.

"In testimony whereof the said Robert Y. Brent and, for the object aforesaid, the said John C. Clarke have hereunto set their hands and seals on the day and year first hereinbefore written.

—— ——. [SEAL.]
—— ——. [SEAL.]

"Signed, sealed, & delivered in our presence:

—— ——.
—— ——.

"DISTRICT OF COLUMBIA,
"*County of Washington, ss:*

"On this —— day of —— 1850, before the subscribers, two of the justices of the peace in and for the county aforesaid, personally appears Robert Y. Brent, party of the aforegoing indenture and acknowledges the same to be his act and deed.

—— ——.

"Hon. JOHN C. CLARKE, *Solicitor.*

"SIR: At a public sale many years ago of Robert Brent's property, some lots and squares were purchased by S. Pleasanton in the name of the United States, but in fact for Jos. Pearson, one of Robert Brent's trustees, who could not therefore bid himself, but was to account to the United States as a purchaser. He neglected to get a conveyance in his lifetime, and his heirs and devisees are now desirous of procuring one. The legal title remains in the surviving trustee, Robert Y. Brent, who, because the property was struck off to Mr. Pleasanton, desires to have the authority of the United States to convey. I presume Mr. Pearson has fully paid up, or that what remained due from him would be covered by his commissions as trustee. This I suppose can be ascertained in your office, and, if there be no obstacle, will be much obliged if you will sign the inclosed deed authorizing Mr. Brent to convey.

Very respectfully, your obedient servant,

WALTER S. COX.

GEORGETOWN, *September*, 14, 1850.

(Note on the back:) I have a distinct recollection that this claim of Mr. Pearson was looked into by J. C. Clark, solicitor, and afterwards by his successor, Mr. Comstock, and both declined to sign the deed as requested. It was afterwards examined by Mr. Streeter, who also declined to sign it, but my recollection is that after hearing the agent of Mr. Pearson, he wrote an informal, unofficial opinion, which he desired to leave on file among the papers; but I do not find it among them. I think, however, a copy was given to the agent of Mrs. P.

B. F. PLEASANTS.

APRIL 22, 1859.

5th. A paper filed by T. B. Streeter, Solicitor of the Treasury, dated May 22, 1857, addressed to the clerk of the land docket. This paper is not signed by Mr. Streeter, but was filed by him, and intended to be official, as is clearly evidenced by the fact that he gave a copy of the same to William Gaston Pierson, esq., which he indorsed in his own handwriting as follows:

SIR: I return you the papers relative to the Brent lots, with a copy of order to the land-docket clerk to make the proper entries. This paper will be placed on file, which will prevent any misapprehension hereafter.

Very truly, &c.,

T. B. STREETER.

TO WM. GASTON PIERSON, Esq.
MAY 22, 1857.

The following is a copy of the Solicitor's order:

SOLICITOR'S OFFICE, *May* 22, 1857.

The following lands, situated in the city of Washington, to wit: Square number seven hundred and ten (710), seven hundred and eleven (711), six hundred and seventy (670), six hundred and seventy-one (671), and six hundred and seventy-two (672), appears on the land book of this office to have been purchased by Stephen Pleasanton, ag't of the Treasury, at a sale by the trustees of Robert Brent, dec'd. No conveyance was made to the United States, but under a decree of the circuit court of the 23rd day of May, 1849, directing the surviving trustee to convey to the U. S., or their assigns, the above mentioned lands were conveyed to the devisees of Joseph Pearson, dec'd.

From the statements of Stephen Pleasanton and the memoranda of the auctioneer, it is manifest that Joseph Pearson was considered to be the purchaser of the lots, and the deed made by the surviving trustee, under the decree of the court, to the devisees of Joseph Pearson was, in my opinion, properly made, though no written assignment from Pleasanton to Pearson is to be found. From the investigation I have given of the matter, I am satisfied that the U. S. have no interest in these lands, and entries should be made upon the land book in accordance with the facts. (No signature.)

_____,
*Solicitor.*

To the CLERK OF THE LAND DOCK.

The committee are assured that squares 670, 671, 672, 710, and 711 have been in possession of Joseph Pearson and those claiming under him ever since the sale in 1822, for a period of sixty years, who have paid the taxes on the same, and the United States has never made any claim to the property or exercised any acts of ownership over it prior to 1881.

The following is a copy of a note made upon a tax bill for 1833 by Joseph Pearson:

*Copy of note made on tax bill for* 1833 *by Joseph Pearson.*

N. B.—½ square 855, purchased by me from Nicholas Young, and all of square 931, purchased by me from Thomas Fenwick & Sons, are not assessed. Squares 670, 671, 672, and all of sq're 711, with the mill, belongs to me. Also square 710, by purchase from R. Y. Brent, and from the trustees of Rob't Brent, by assent of S. Pleasanton, agent of the Treasury. The titles under this trust sale not yet executed.

The committee are informed that deeds in possession of the family vouch for the truth of the statement regarding purchases from Young, Fenwick& Sons, and Robert Y. Brent, and Mr. Pearson's corrections of the tax-list being correct in those particulars, makes it probable that they were also correct regarding the property claimed by the United States.

The following is an affidavit made by John G. Worthington, brother in law of Joseph Pearson, dated March, 28, 1872:

DISTRICT OF COLUMBIA,
*County of Washington:*

On this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and seventy-two, before me the subscriber, a notary public in and for said Disirict, personally appears John G. Worthington, aged seventy years, late of Cincinnati, Ohio, and now a resident of Georgetown in the aforesaid District, who, being duly sworn on the Holy Evangely of Almighty God, deposeth and saith:

I distinctly recollect going about twenty years ago, with my sister, Mrs. Catherine Pearson, widow of Joseph Pearson, to see Mr. Pleasanton, then, I believe, Fifth Auditor of the Treasury of the United States, relative to the property claimed to have been bid off by said Pleasanton for said Pearson at the sale of property belonging to the estate of the late Col. Robert Brent, situated in the city of Washington in the

aforesaid District, about north or northeast of where now stands the Government Printing Office, and adjacent to the mill property owned by said Joseph Pearson, deceased, on Tiber Creek.

I recollect that it was fully admitted by Mr. Pleasanton at that time that he had bid off, as claimed, the lots for Mr. Pearson, and he promised, I think, to give Mrs. Pearson his personal services in securing a proper conveyance of the said property to the estate of Mr. Pearson. It is now some time since these circumstances occurred, and I have not the clearest recollection of the details, but have the most distinct recollection of the full admission by Mr. Pleasanton that he had in person bought in the said property for Mr. Pearson, and that his estate was, without question, entitled to them. I further recollect that in a subsequent visit to Washington I made an effort, either with my sister or nephew, William G. Pearson, to see the Solicitor of the Treasury with reference to getting the release of the government to said property, but we did not see him, he being absent, as we were informed, from the city. At a still later period, on a subsequent visit to this city I called the attention of my nephew to this business, and he informed me that the matter had been arranged.

JOHN G. WORTHINGTON.

Sworn to and subscribed before me this 29th day of March, 1872.

[SEAL.] JAS. S. EDWARDS,
*Notary Public.*

The United States never made any claim to this property prior to March 19, 1881, at which time the Hon. K. Rayner, Solicitor of the Treasury, addressed a letter to Col. George B. Corkhill, United States attorney, directing him take "such legal measures as may be necessary to remove the cloud upon the title and to affirm the same in the United States."

The United States attorney caused a complete abstract to be made of the title, but has taken no further action in the premises.

The following is a copy of his letter to the Solicitor of the Treasury:

OFFICE OF UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,
*Washington, D. C., April 27, 1882.*

SIR: Referring to your letter of March 19, 1881, concerning the title to certain real estate in squares 670, 671, 672, 710, and 711 in this city, I have the honor to say that I have caused a full and complete abstract of the title to be made, and find that, according to the record, it is in the United States, notwithstanding the conveyance by Robert Y. Brent, trustee, under date September 13, 1850, to Catherine Pearson *et al.*, heirs at law and devisees of Joseph Pearson, deceased.

I am, however, informed by persons in position to be well informed upon the subject, that the heirs and devisees of Pearson have an equitable claim to the property; that Pearson's commissions as trustee for the sale of the property were never paid in money, and that it was understood and agreed among all parties in interest in the equity suit of United States *vs.* Brent, in which the sale was made, that Pearson should take the property in question, in lieu of money, in satisfaction of his commissions as trustee. There is nothing in the records to show this fact, but such is the tradition concerning the matter.

House bill No. 2402, now pending, provides that the United States, through the Secretary of the Treasury, shall quit-claim to the devisees of Catherine Pearson (the widow of Joseph) all the right, title, and interest of the United States in the property in question, and I have been called upon by the subcommittee of the Committee on the District of Columbia of the House of Representatives for an expression of opinion as to the propriety of passing this bill.

In view of the fact that I have your written directions to enter suit with a view to removing the cloud on the title of the United States, I have declined to express any opinion in the premises, and I now submit the matter to you and await such further instructions as you may see fit to give me.

Very respectfully,

GEORGE B. CORKHILL,
*United States Attorney, District Columbia.*

Hon. KENNETH RAYNER,
*Solicitor of the Treasury.*

The following is a letter from Hon. George B. Corkhill, United States Attorney, suggesting certain amendments to the bill:

OFFICE OF UNITED STATES ATTORNEY,
DISTRICT OF COLUMBIA,
*Washington, D. C., April 27, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant, concerning the title of the United States to the property mentioned in bill H. R. 2402. In reply I beg to say:

1st. That I have not yet taken any legal steps to remove the cloud upon the title to

said property and affirm the same in the United States, and shall not do so until I receive further instructions from the Solicitor of the Treasury, for reasons set out in my letter to the Solicitor of even date herewith, a copy of which I inclose.

2d. Inasmuch as in this matter I must act under the direction of the Solicitor of the Treasury, I must respectfully decline to express any opinion as to the propriety of the passage of bill H. R. 2402; but will suggest that if the bill be passed, the *proviso* should be amended as indicated in the copy of the bill which I inclose herewith, so as to provide that the United States shall be reimbursed for all expenditures made in relation to the land in question; and also that the bill should provide for a quit-claim to the heirs and devisees of *Joseph* instead of *Catharine* Pearson.

Very respectfully,

GEORGE B. CORKHILL,
*United States Attorney, D. C.*

Hon. MILTON G. URNER, M. C.,
*Chairman Subcommittee on Judiciary of Committee on District of Columbia.*

The bill (H. R. 2402) referred to the committee has reference to squares 671, 672, 710, and 711. These lots are claimed by the devisees of Catharine Pearson, deceased.

The committee have also had under consideration the petition of Augustus Jay, who claims to be the equitable owner of square 670. The evidence hereinbefore referred to applies equally to square 670 as it does to the other lots, and by amending bill H. R. 2402, as suggested by Mr. Corkhill, so as to quit-claim and release unto the heirs and devisees of Joseph Pearson, deceased, their heirs and assigns, and then further amend the bill so as to include square 670, all the relief to which the parties are entitled can be granted in one act.

The committee are of opinion that the testimony clearly proves that squares 670, 671, 672, 710, and 711 were purchased by S. Pleasanton for Joseph Pearson, who claimed the land as his own during the whole of his life-time, paying taxes thereon; that he was the equitable owner thereof, and while the legal title is in the United States, yet the government has no equitable claim to the property and ought to quit-claim and release the same to those who are the owners in equity.

The committee therefore report back said bill, H. R. 2402, with the following proposed amendments, and recommend that it be passed as amended:

In line 4, before the word "devisees," insert the word *heirs*, and after the word "devisees" insert the words *and assigns*.

In line 5, strike out the word "Catharine" and insert the word *Joseph* in the place thereof.

In line 7, after the word "squares," insert the words *six hundred and seventy*.

The committee do not feel justified in recommending the other amendment suggested by Colonel Corkhill, which is that the United States shall be reimbursed the expense incurred, which was for procuring an abstract of the title. This expense was comparatively small, being not more than several hundred dollars at most. If the claimants are entitled to the land, as the committee think they are, then they should not be required to pay the cost incurred by the United States in investigating the title.

The parties in interest under the bill are the family of the late Carlile P. Patterson, Superintendent of the Coast Survey of the United States, who, while living, employed all his time in the service of the government, with that unselfish devotion by which he was so highly distinguished, and which caused a neglect of his private interests that doubtless accounts for the seeming delay in having the title to this land perfected.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 843.

# IN THE SENATE OF THE UNITED STATES.

JULY 20, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 6249.]

The Committee on Pensions, to whom was referred the bill (H. R. 6249) granting increase of pension to Joseph F. Wilson, have examined the same, and report, recommending the passage of the bill.

The bill proposes to increase the pension of applicant from $24 to $40 per month. The propriety of this increase is recognized by the Pension Office, and the following letter by Dr. Hood is filed in the case. The House has passed the bill, and we recommend the same without hesitation:

DEPARTMENT OF THE INTERIOR, PENSION OFFICE,
*Washington, D. C., May 22, 1882.*

The disability in the case of Joseph F. Wilson, who is pensioned under certificate 83,115, is very grave.

The missile, as shown by certificates of examination on file in his "case," struck the lower jaw to the left of the mesial line, and completely comminuted the bone, both sides. The entire bone has been removed, producing marked deformity, and, by loss of the teeth, inability to masticate solid food. The tongue, too, was implicated in the wound, and, being bound down by cicatricial adhesions, its movements, and therefore its uses, considerably limited. In such a case the disability is very much greater than appears *prima facie*. The inferior maxillary division of the fifth pair of nerves (the nerve of common sensation of the entire face), which supplies the lower teeth, was seriously involved in the wound and in the subsequent surgical treatment.

The case is unique in several particulars, there being no parallel to it, as I am aware, on the pension-rolls. The wound is a center from which radiates an irritation which produces pain at distant points, and which interferes very seriously with the processes of general nutrition.

It should seem that Mr. Wilson is entitled to such recognition as cannot be granted under the general pension law.

W. B. HOOD, A. M., M. D.,
*Medical Referee.*

The report of the House committee is as follows, excepting the extract from letter of Dr. Hood:

Joseph F. Wilson, of Peoria, Ill., was mustered into the United States service April 25, 1861, as a private in Company E, Eighth Regiment, Illinois Infantry Volunteers, for three months, at the expiration of which time he re-enlisted in same company and regiment for three years or during the war. He was promoted to corporal of said company, in which capacity he served until the time of the battle of Fort Donelson, Tennessee. On the third and last day of said battle, February 15, 1862, while engaged with his regiment in the battle, he was shot by the enemy, the missile striking the lower jawbone to the left of the mesial line, completely destroying the bone on both sides.

Not only was the entire lower jawbone destroyed, but also a considerable portion of the muscular substance of the chin, lower lip, and one side of the face, leaving him permanently disfigured and an invalid for life. He also lost four of the teeth of the

upper jaw. The tongue was greatly injured, interfering with its natural functions, and he is unable now to thrust it beyond his lips. For many months he lay prostrate, not even being able to speak. With the aid of artificial teeth he can now articulate reasonably well when speaking slowly; but they do not aid in the mastication of solid food, there being no jawbone to support them and resist the pressure. In consequence of this fact he is obliged to subsist on liquid food and such other food as does not require mastication. Because of the quality of food he is obliged to use he suffers from indigestion, and his health is constantly failing—weighing, as he affirms on oath, from forty to fifty pounds less than before receiving the wound.

In a word, Joseph F. Wilson, by reason of the said wound, is in a broken and constantly-declining state of health, and is incapable of performing manual labor as a means of subsistence.

The petitioner is now receiving a pension at the rate of $24 per month, that being all that can be allowed under the general pension law. He asks in his petition that it be increased to $72 a month, believing his disabilites are equal to those who have lost two arms or two legs.

While the committee are satisfied that Corporal Wilson's general health is not as good as that of some who have lost two limbs, and that he may not live so long as they, they do not believe his condition to be as helpless as theirs. They believe, however, that he is entitled to an increase above the rate now received, and recommend that the bill (H. R. 6249) be amended as follows:

Strike out in line 8 the words "seventy-two" and insert in place thereof the word *forty;* and as thus amended that the bill do pass.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 844.

# IN THE SENATE OF THE UNITED STATES.

JULY 20, 1882.—Ordered to be printed.

Mr. GROOME, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 757.]

*The Committee on Pensions, to whom was referred the bill (S. 757) granting a pension to Joseph McGuckian, have considered the same, and report:*

That at the breaking out of the war of 1861, and for some time thereafter, Joseph McGuckian was a watchman and trusted messenger of the War Department at Washington, and because of his fidelity and promptness was frequently intrusted, by the Secretary of War, with important messages, both by day and by night, to the different bureaus of the War Department and military commanders stationed in Washington. On one occasion, while doing the duty of a mounted orderly, in carrying an important order from the Secretary of War to the commandant at the Washington Arsenal, he was thrown from his horse, at midnight, and seriously injured, from the effects of which he is still suffering.

The fact that he was injured while engaged in such service is proved by the statements of Generals Ramsey and Sickles, and of the late Secretary Stanton.

Mr. McGuckian subsequently enlisted in the Army as a sergeant, to serve for five years, and was discharged before the expiration of his term of service; but he candidly admits that the disability for which he asks a pension was not contracted during his service as an enlisted man.

Your committee fail to discover any sufficient reason for making Mr. McGuckian's case an exception to the rule that civil employés of the government are not pensionable, and consequently recommend that the bill referred to them do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 845.

# IN THE SENATE OF THE UNITED STATES.

JULY 21, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 2080.]

*The Committee on Pensions, to whom was referred the bill (S. 2080) granting a pension to George Foster, having examined the same, report as follows:*

That George Foster enlisted as a private in Company C, Tenth Regiment of Cavalry, on the 12th day of March, 1867, to serve five years.

The case was rejected at the Pension Office on the ground that the disability was not incurred in line of duty, and that said Foster was drunk at the time of contracting the disability, and a deserter. Nothing whatever appears in the papers to substantiate the record of drunkenness, and that the disability was not contracted in the service, except the military report from the Adjutant-General's Office.

The claimant alleges that in the winter of 1868 he was sent with an escort from Fort Hays to Fort Dodge, in Kansas, and *en route* his feet were both frosted, and he was left at Fort Zara, Kans., where both feet were amputated at the ankle. In support of this state of facts the claimant files his own affidavit, which is substantially as follows:

That he was a private in Company C, Tenth Regiment Regular United States Cavalry, and was discharged honorably from said service as such on account of disability, resulting from having both feet frozen while in the line of his duty in said service, and that he is the claimant in pension case No. 167730; that he is uneducated, and cannot read or write, except to sign his name; that he never signed nor swore to any affidavit, the contents of which had been known to him, stating, or by any possible construction admitting, directly or indirectly, or tacitly consenting to the statement in any manner or form, that he was under the influence of liquor at the time his feet were frost-bitten; that such a statement is utterly and absolutely false and impossible from the nature of the circumstances, he having been over six hours away from camp with the escort, as stated in the papers accompanying his application, and could not by any possibility have obtained a drop of any kind of liquor after leaving the camp; that if there is any record evidence either in the War Department or before the Pension Office setting up, or in any manner supporting, a statement that this deponent was under the influence of liquor at the time his feet were frozen, all, each, and every item of it is utterly and entirely false, and unfounded in fact, which he is able and willing to prove, if informed of the nature of the evidence.

George Allen, being duly sworn according to law, deposes and says that he was a private in Company C, Tenth Regiment United States Cavalry, for five years, ending sometime about the month of October, 1872; that he is well acquainted with the claimant, George Foster, who was also a private in said company, and, so far as affiant knows, said Foster was a good and faithful soldier; that in the fall of 1868, after the summer campaign, said company C, Tenth Cavalry, was stationed at Fort Hays, Kans., until General Sheridan arrived there, and then the company was ordered to accompany him as an escort to Camp Supply; that when the company was taken away it was obliged to leave a number of horses at Fort Hays, and a detachment was left there under command of Sergeant William Gibson; that the claimant Foster was one of the detachment left, in consequence of his horse being disabled; that affiant went with his company, and heard nothing further of claimant, Foster, until about March, 1869, when the other members of the detachment left at Fort Hays rejoined the company at Fort Arbuckle; that Thomas Ford, George Bloomfield, David Dunn, and Alexander Duncan, the other members of Sergeant Gibson's detachment, whose whereabouts is

not now known, reported that when Foster went out with the scouting party, as set forth in his petition, he was suffering from chronic diarrhea; that a terrible snowstorm was raging when he—Foster—was obliged to stop to relieve his bowels; that the tracks of the horses were covered over almost as quick as made; that they presumed Foster lost his way in the blinding snowstorm in consequence, as they heard the report of his gun, and asked permission of Sergeant Gibson to reply, but he refused to allow them, and scouted the idea of Foster being lost; that when the party had arrived at the fort, and Foster was missing, they were finally ordered back to search for him, but without success; that Sergeant Gibson then declared he would report Foster as a deserter anyhow; that at the time there were charges pending against said Sergeant Gibson for murder and desertion, and Foster was one of the most important witnesses against him; that said sergeant disliked Foster and was anxious to get rid of him, and took this opportunity to get rid of him; that Foster had not been drinking at the time, but was perfectly sober, although perhaps somewhat weak from the effects of diarrhea; that the captain of the company, Edward Burns, was extremely partial to Sergeant Gibson and disposed to favor him in every way in his power, and it was through his influence that Gibson escaped trial upon the charge of murder, and that the captain and sergeant connived together to perpetuate the charge of desertion against the claimant, and that Captain Burns was afterwards himself tried by court-martial upon charges of brutality, &c., and dismissed the service, and that affiant verily believes that the charge of desertion and drunkenness against the claimant, Foster is utterly false and malicious.

Much of the testimony indicated that there existed a remarkable state of affairs in this case, and your committee sent to the Secretary of War for any evidence on file in that department; and in response thereto your committee were furnished with a lot of contradictory matter, consisting of statements by Sergeant Gibson and others, at variance with each other, and contradictory of the statements made by Foster, and other affidavits in his behalf.

The papers above referred to show that an evident effort was made to try the said Foster by court-martial, which failed altogether. A bad feeling evidently existed towards Foster, and no stone was left unturned to make out a case against him. The facts are of such a peculiar character as to be hard to arrive at the true state of affairs; but the case as made out against Foster, in its strongest light, should not weigh as against the facts as they seem to have been at the time when Foster lost both his feet. The ground of desertion was that he loitered behind the other men in a blinding snowstorm, and either could not or would not keep up. Nothing is filed to show that his character was bad before the alleged desertion. It does not seem probable that Foster would have selected such weather to desert in. The fact of his being frosted to the extent of losing both feet shows conclusively that the weather was unpropitious for desertion, and all the evidence proves this. Then, the falling behind in the presence of his officer, does not look like willful desertion, when so many opportunities must have occurred to desert when the officers would not have seen him, and the weather would not have been so inclement as to have caused the loss of both feet. The story all the way through bears an air of great improbability.

Foster has been before your committee, and is an unusually good appearing colored man, bearing the appearance of a sober, straightforward colored man. He is unable to read and write, and says he had to depend wholly upon others to read the papers to him upon which he made his mark. He is most positive in his statement that he was not a deserter, and was not drunk, and your committee must confess that there is no proof that does show positively that he was either a deserter or drunk, and such allegation on the part of his sergeant was founded on "impression" and "belief." Foster files his original honorable discharge to show that the charge of desertion was not substantiated.

Your committee recommend the passage of the bill (S. 2080) granting a pension to George Foster.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 846.

# IN THE SENATE OF THE UNITED STATES.

JULY 21, 1882.—Ordered to be printed.

Mr. MILLER, of California, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany S. Res. 88.]

The Committee on Naval Affairs, to whom was referred the joint resolution (S. Res. 88) authorizing the appointment and retirement of Samuel Kramer a chaplain in the Navy of the United States, beg leave to report that they have examined the same, and recommend its passage.

The following extract from a letter of the Secretary of the Navy, dated the 18th instant, together with the accompanying memoranda, fully explains the case:

NAVY DEPARTMENT,
*Washington, July* 18, 1882.

SIR: * * * * * * * *

I inclose a large number of testimonials in Mr. Kramer's behalf, from which, and a memorandum summarizing the same, it appears that he has been most faithfully serving at the Washington navy-yard for several years, and that he has a record of much merit.

Very respectfully,

WM. E. CHANDLER,
*Secretary of the Navy.*

Hon. JOHN F. MILLER,
*Member of the Committee on Naval Affairs, United States Senate.*

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*Memoranda in the case of Rev. Samuel Kramer, an applicant for appointment and retirement as a chaplain in the United States Navy.*

The Rev. Samuel Kramer (an ordained minister of the Methodist Episcopal Church) performed the duties of chaplain at the navy-yard, Washington, *without pay*, for many years. On the 3d of July, 1880 (after the death of the chaplain in the Navy on duty in the yard), the Secretary of the Navy (Hon. R. W. Thompson) informed the commandant of the yard that Mr. Kramer should receive compensation for his services at the rate of $75 per month. He continued on duty, and to be so paid (out of the appropriation, "coutingent Navy"), until May 15, 1882, when, on account of want of funds, he was, with others, notified that his services would not be required after June 30, 1882. During this time there was no regular chaplain on duty at the yard.

Mr. Kramer is strongly recommended by the commandant of the yard (Commodore Pattison), who states, May 23, 1882, that "he has been a faithful chaplain, and is highly spoken of by everybody who knows him. As he has served as a seaman in the Navy, he is invaluable as a chaplain. Seamen will listen to him when they will not to the general run of preachers. He is located in the seamen's library in this yard, attends the sick in the hospital, and officiates at funerals of deceased seamen and marines, and distributes Bibles and tracts." This letter is accompanied with a testimonial letter signed by all the officers of the yard.

February 1, 1881, Commodore A. A. Semmes, Commander R. D. Evans (then in

command or the training-ship Saratoga); Commander J. D. Graham, commanding the receiving ship at the yard; and Lieut. D. G. McRitchie (then in command of the Tallapoosa), joined with Commodore Pattison in asking the appointment of Mr. Kramer as a chaplain in the Navy, and that he be assigned to duty at the Washington navy-yard. These officers state that Mr. Kramer "has, in our opinion, obtained the love and respect of officers and men who have listened to his exhortations. For many years he has performed the duties of chaplain at this yard without pay, to the entire satisfaction of the officers and men, on board the vessels of the United States Navy, on which he has held divine service, and we are of the opinion that there is more good derived from the preaching of a converted sailor to sailors than from any one who has never been to sea." (Mr. Kramer was too old for appointment, the law fixing the age between twenty-one and thirty-five years, and Mr. Kramer was over sixty years old.)

From letters and statements on file in the Navy Department it appears that Mr. Kramer followed the sea for many years; was in the United States Navy, serving on the Dolphin and Brandywine in 1829. After leaving the service, he entered the church, and has given more than twenty years' service, without pay, to the cause of seamen, building the Sailor's Bethel Church in Baltimore, Md. He served as chaplain of the Third Regiment of Maryland (Union) Volunteers. At the battle of Antietam he acted as major of the regiment (in place of the major who had been killed in a previous battle), an dafter that battle was, at the request of the colonel, commissioned as major. He was honorably discharged in August, 1863, on account of disability incurred in the line of duty. He is indorsed and recommended by Bishop E. G. Andrews, Rev. H. R. Naylor, Rev. John Lanahan, Rev. B. Peyton Brown, and Rev. W. W. Hicks, all of the Methodist Episcopal Church; Rev. W. A. Leonard, of St. John's (Episcopal) Church, Washington; Thomas L. Tullock, and Matthew G. Emery (ex-mayor) of Washington, and Chaplain M. J. Gonzales, U. S. A.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 847.

# IN THE SENATE OF THE UNITED STATES.

JULY 22, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2524.]

The Committee on Pensions, to whom was referred the bill (H. R. 2524) granting a pension to Alice J. Bennit, have examined the same, and report recommending the passage of the bill. The report of House committee is as follows:

It appears from the evidence in the case on file in the Pension Office that the petitioner is the widow of Charles N. Bennit, late private Company H, Fourteenth New York State Militia, who was a pensioner upon the rolls—

"For loss of leg below the knee, the result of wound received at the battle of Bull Run, August 29, 1862. He was pensioned at $8 per month from date of discharge, October 8, 1862, and paid at that rate till March 3, 1865, when, under the provisions of the act of that date, his pension was suspended by reason of his employment in the civil service of the government. Under the provisions of the act of June 6, 1866, payment of pension was resumed, and the rate thereof increased to $15 per month. A further increase to $18 per month was allowed under the act of June 8, 1872. The amount withheld between March 3, 1865, and June 6, 1866, was paid to the widow May 16, 1879."

The following certificates of the attending physicians show time and cause of death of the soldier:

"This is to certify that I was one of the attending physicians on Charles N. Bennit during his last illness. He was taken with a convulsion about 7 p. m. November 25, and died November 26, at 2 p. m. His disease was congestion of the brain, with probably a rupture of one of the cerebral arteries. In my opinion the cause of his death was indirectly related to the loss of his leg during the war. My reasons are, briefly, as follows, viz: In any person losing a limb just as much of the area of the circulation of the blood is cut off, and so a greater pressure is brought to bear on the remaining vessels. Again, there is a great amount of vital force expended by anybody who is obliged to carry around eight or ten pounds of wooden leg. This is an ever-increasing burden, and will in time gradually undermine the party's health. Thus in Charles N. Bennit's case, with a debilitated system and an increased blood pressure, nothing is more likely than his death by congestion of the brain.

"WILL. W. BENNIT, M. D.,
"*28 Bond Street, Brooklyn, N. Y.*

"APRIL 28, 1880."

"BLADENSBURGH, PRINCE GEORGE'S COUNTY, MD.,
"*September* 30, 1879.

"The undersigned was called hurriedly on the night of November 25, 1878, to see Mr. Charles N. Bennit. in consultation with his brother, Dr. William Bennit. The history of the case, as gathered from the attending physician, was that the patient had been ailing for some time with intermittent fever, and that he had showed symptoms of fever for several days previous to my visit. I was told that he had complained for some time past of occasional attacks of violent headache. The amputated limb was excessively wasted. I found the patient completely comatose, having just gotten over a strong convulsion. I diagnosed 'cerebritis' developed from 'malarial fever.' The patient never recovered consciousness; had frequent slight convulsive movements during the entire night, dying next day, November 26, 1878, at about 2 o'clock p. m.

"CHARLES A. WELLS, M. D."

Your committee are of the opinion that this is a meritorious case, and, in view of the fact that there have been precedents established covering similar cases, and in view of the advanced age of the petitioner and her helpless condition, report favorably on her prayer, and recommend the passage of the bill (H. R. 219) for the relief of Mrs. Elizabeth Leebrick, with the following amendment: Add the words, *at the rate of sixteen dollars per month.*

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 848.

# IN THE SENATE OF THE UNITED STATES.

JULY 22, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 219.]

*The Committee on Pensions, to whom was referred the bill (H. R. 219) granting a pension to Elizabeth Leebrick, have examined the same, and report as follows:*

It appears, from an examination of the petition and accompanying papers, that the petitioner is a resident of Quincy, Ill., and is now over eighty-two years of age, the daughter of Jacob Angus, a Revolutionary soldier of the State of Pennsylvania.

The evidence before your committee shows that this lady rendered valuable aid to the soldiers, as nurse and attendant, in the different hospitals in the Southwest during the war of the rebellion, which were entirely gratuitous on her part, and that she spent of her own private means about the sum of $700 in this charitable work.

Dr. R. Nicholls, surgeon general hospital, Quincy, Ill., June 8, 1863, states:

> Mrs. Leebrick having told me that it is reported that she receives pay for her services to the soldiers, I certify that never to my knowledge has she received any compensation for the valuable services rendered by her to this hospital.

Newton Flagg states, May 20, 1869, in a letter to the petitioner (dated Quincy, Ill.):

> I was stationed at this place as assistant quartermaster and acting commissary of subsistence during the late war. I can testify that during all that time you were the constant and devoted friend of all our soldiers, but more especially of those who were sick and suffering. I know that the greater part of your time for four years was spent in their service, and that by your efforts many thousands of dollars were gathered and distributed to the sick and wounded, not only in our own hospital, but to those in the field.

There are other letters showing the character and value of the service rendered by the petitioner, especially to our invalid soldiers, and it is shown that she met with a severe accident while assisting in the transfer of the sick and wounded, after the battle of Shiloh, to Quincy, Ill.

The petitioner is partially blind, having lost the sight of an eye, and her husband has been totally blind for eight years. An application was made three years ago to the Pension Office for her relief, but, as there is no law allowing a pension to this class of cases, nothing could be done there.

Your committee are of the opinion that this is a meritorious case, and, in view of the fact that there have been precedents established covering similar cases, and in view of the advanced age of the petitioner and her helpless condition, report favorably on her prayer, and recommend the passage of the bill (H. R. 219) for the relief of Mrs. Elizabeth Leebrick, with the following amendment: Add the words, *at the rate of sixteen dollars per month.*

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 849.

# IN THE SENATE OF THE UNITED STATES.

JULY 22, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1011.]

The Committee on Pensions, to whom was referred the bill (H. R. 1011) granting increase of pension to Daniel G. George, have examined the same, and report, recommending the passage of the bill.

The House report is as follows:

The petitioner, Daniel G. George, was mustered into Company D, First Regiment Massachusetts Cavalry, as a private on the 17th day of September, 1861, for three years or during the war. He was wounded on the night of the 27th of March, 1862, about 12 or 1 o'clock, while in the line of duty, going the grand round with his captain, by being thrown from his horse against a tree, fracturing the right thigh, breaking the bone into eight pieces; treated in regimental hospital, transferred to general hospital at Hilton Head, S. C., on the 22d day of May, 1862, as Dan. G. George with "*fracture*" (no other diagnosis). He returned to duty June 20, 1862, and subsequently engaged in all the battles in which his command took part. At Aldie, Va., he led his company into the cavalry fight on the 17th of June, 1863, with fifty-four men, and lost fifty of them killed, wounded, and taken prisoners. His horse, pierced with seven bullets, fell on his leg, from which George could not escape, and he was taken prisoner, carried to Libby Prison, Richmond, Va., where he remained three months, when, being regularly exchanged, he rejoined his command, with which he remained until transferred to the Navy, the 21st day of April, 1864, when he enlisted and was sent to Brooklyn navy-yard, and where a draft was made for the Chicopee, South Atlantic station. One William Smith was drawn, who did not want to go, so Mr. George, who liked the naval service (having served in the Navy five years previous to the war), exchanged papers with Smith, and when the roll was called answered to Smith's name, and was known on the Chicopee as William Smith. He was coxswain of Lieutenant Walker's boat.

Lieutenant Walker called for volunteers to blow up the rebel ram Albemarle, in Plymouth Harbor, Pamlico Sound, and George was the first volunteer who responded to the call. The party started for the rebel ram on the night of October 24, 1864, and finally succeeded in getting to her in the darkness of the night. Mr. George and a chum named Haden dropped the torpedo, of 186 pounds weight, down under the ram. Cushing gave the order to reverse steam and back over the logs, which they were unable to do. Cushing finding they could not get her out, cried out: "Pull her off, Dan; we'll all go to hell together!" Dan. pulled the lanyard, and the torpedo exploded, opening a seam twenty feet long and an inch or more wide, which sank the ram in about two hours. Those in the lieutenant's boat were blown into the air, and all but Cushing and Haden taken prisoners. George and the crew were surrounded by the infuriated rebels, who would have killed them on the spot had it not been for Captain Cooke, of the Albemarle, who rushed to the spot with revolver in hand and said he would shoot the first man who attempted to injure them, declaring that he had been thirty years in the United States Navy, and this was the bravest deed he had ever known.

Mr. George was taken to Salisbury Prison, remained there eight or nine months, till the war closed, when he returned to the Chicopee, and was honorably discharged April 26, 1866, having served four years six months and sixteen days, during which time he was engaged in twenty-one battles, besides many skirmishes with the enemy.

He filed his application for a pension February 23, 1877, and was pensioned November 17, 1877, from October 1, 1877, at $12 per month, for "fracture of right thigh,"

arrears allowed from April 27, 1866, to September 30, 1877, at $8 per month. Application for increase filed July 6, 1880, on account of original disability. Dr. James H. Crombie, who was the examining surgeon at the time of his original application, states that in his opinion said Daniel G. George is disabled to the extent, or equivalent to the loss of one foot, or one hand. Judging from his then present condition, and from the evidence before him, Dr. Crombie gives the opinion that the disability originated in the service and in the line of duty, and that it is permanent.

Your committee, after a thorough examination of the papers, make a favorable report and unanimously recommend the passage of the bill granting him an increase of pension to $24 per month, from and after the passage of the bill.

The romance of war has seldom developed a more extraordinary character, and never has exhibited more elevated though unconscious patriotism and sublime courage than Daniel G. George. We place the following letter upon the permanent records of the country, addressed years ago to one of your committee, then a member of the House of Representatives, who assisted Mr. George in procuring his original pension.

Mr. Blair, to whom the following letter is addressed, takes pleasure in bearing testimony, by incorporating the same in this report, to his personal confidence in the statements of Mr. George of gallantry and honest character he has known for several years:

HON. HENRY M. BLAIR, M. C.,
*Plymouth, N. H.:*

SIR: The following statement is a true and correct account of the services of Daniel G. George, Company D, First Massachusetts Cavalry. Mr. George left home at the age of sixteen and shipped on a whaler, and was gone on a cruise of four years and four months; he sailed around the world, and from the Arctic to the Antarctic Ocean; while in pursuit of a whale his boat was broken by the whale and he was an hour in the water clinging to a floe of ice, and when taken out was covered with two inches of ice. He was also lost overboard in a storm and rescued by great efforts. He returned home at the outbreak of the rebellion and enlisted with his brother, John H. George, in the First Massachusetts Cavalry; was with the Sherman expedition to Port Royal, and while at Hilton Head was making the grand rounds, as orderly sergeant, at 1 p. m., when his horse became frightened by rebel pickets firing and ran away, striking Mr. George's leg against a tree and breaking it into seven or eight pieces, crushing it for 6 inches; the leg was examined by all the brigade and regimental surgeons then in camp, who said it must come off, and had filled a sponge with ether to put to his nose, when Surgeon James H. Howland, of the First Massachusetts Cavalry, came hurrying to the spot and declared that the leg should not come off, and that he (Howland) would give the wounded soldier a leg that he could serve his country with yet. Hurling the Pennsylvania surgeons (who were just in the act of performing the amputation, and who would have had his leg off in ten minutes) from Sergeant George, he bound up the leg and Mr. George lay in the hospital six months before his leg was well, and he was then tendered a written discharge by Surgeon Howland and a verbal discharge by Colonel Williams, "that he need not do any more duty," both of which discharges he refused, and, at the request of Charles Francis Adams, jr., who had been commissioned as captain of Company D, he joined his old company again as orderly sergeant, and as the injured leg was 2 inches shorter than the other and he could not bear his weight upon it, the saddler built a bolster on his saddle and he rode with his leg over the bolster while in the service; and now at this time, and to this day, he cannot sit with that leg hanging down, but puts it upon a table or chair back, as I myself have personally seen him when at his house. Sergeant George led his company into the cavalry fight at Aldie, June 17, 1863, with 54 men, and lost 50 of them killed, wounded, and prisoners; his horse, which had seven bullets in him, fell on this leg, holding him there, and he was taken prisoner, his cavalry boots taken off, and himself driven a hundred miles barefooted, the blood marking every footstep for 50 miles; when he could travel no farther he was put into a car, taken to Richmond, and was a prisoner in Libby and Belle Isle three months, when he and his rebel guard made a bargain and the guard deserted his post, and they hid in negro shanties days and traveled nights until they reached our lines; was sent to Annapolis until regularly exchanged, then re-enlisted in his company and came home on a veteran furlough of his regiment, and while in Faneuil Hall, Boston, was publicly recommended by his captain, Charles Francis Adams, jr., for a commission. Governor Andrew sent him a captain's commission in the Fifth Massachusetts Colored Cavalry, then forming, which he refused, and told the bearer, Col. John Quincy Adams, of Andrew's staff, "that he had commanded white men nearly three years and would not take negro troops to command, and that he did not thank John A. Andrew for the commission, nor he (J.

Q. Adams) for bringing it." He went back to the front with a promise from Governor Andrew that he (George) should have a commission in his own regiment within three months. After waiting five months he applied to the Navy Department for a transfer into the Navy, was examined, and passed by the naval board; the same mail brought him a lieutenant's commission in his own regiment and a transfer. He took the transfer, as he had applied for it, and feeling that he had not been justly used by Governor Andrew, as he had been recommended for nearly two years for a commission by two colonels, three majors, and two captains before it finally came, and men not as deserving had been promoted over him, he was too inflexible to reverse his naval application. He was then sent to Brooklyn navy-yard, and when a draft was made for the Chicopee, South Atlantic squadron, a William Smith was drawn who did not wish to go, so Mr. George, who liked an active life, changed papers with Smith, and when the roll was called answered to the name of William Smith, and was known on the Chicopee as William Smith the first, as there were other Smiths on board. Mr. George, as coxswain of Lieutenant Walker's boat, heard Cushing asking Walker for volunteers for blowing up the ram Albemarle in Plymouth Harbor, Pamlico Sound, when Mr. George volunteered, and was the first volunteer, and on the night of the 24th of October, 1864, went into Plymouth Harbor, passed a hundred rebel picket boats, who were on the lookout for them, as they had been in on the night before (23d) and could not find the ram in the darkness, and passed down and out the harbor through the rebel picket boats to our fleet, they thinking it was some of their boats till they saw them go aboard our vessel, and so were on the lookout the next night, and put a battery of artillery and a thousand men to defend the ram, and posted lookouts to give the alarm should any boat cross a belt of light on the water, caused by the harbor lights. As they crossed this belt they were hailed with "Who goes there?" Cushing answered, "Yankees, damn you." Then came a shower of bullets which riddled the gunwale of their steam launch. They now discovered the ram by the flash of her big guns and made for her, passing around her twice before they succeeded in jumping their boat over the boom that surrounded her. Mr. George and a chum named Haden dropped the torpedo of 186 pounds down under the ram. Cushing gave the order to reverse steam and back over the logs, which they were unable to do. Cushing, finding they could not get out, gave the order, "Pull her off, Dan; we'll all go to hell together!" Dan pulled the lanyard and the torpedo opened a seam 20 feet long and an inch wide and sunk the ram in two hours. They were blown into the air and all but Cushing and one other, Haden, taken prisoners. Mr. George and the crew were surrounded by the infuriated rebels, who would have killed them on the spot had it not been for the captain of the Albemarle, Cooke, who rushed to the spot, revolver in hand, and declared he would shoot the first man who injured the Yankees; said he, "I have been thirty-five years in the United States Navy and this is the bravest deed I have ever known." Mr. George was sent to Salisbury Prison; was there eight or nine months, till the war closed, when he returned to the Chicopee and was discharged April 26, 1866, having served four years six months sixteen days, having been engaged in twenty-one battles besides many skirmishes. Last fall Mr. George was thrown from his team and had his shoulder broken, which disabled him from work all winter, and he has a wife and five small children dependent on him for support. Mr. George would probably never have applied for a pension but for this last accident.

DANIEL G. GEORGE.

STATE OF NEW HAMPSHIRE,
*Rockingham, ss:*

DERRY, *July* 19, 1877.

Personally appearing the above-named Daniel G. George, made solemn oath that the foregoing statement by him subscribed is true. Before me.

WILLIAM ANDERSON,
*Justice of the Peace.*

Your committee recommend the increase of pension granted by this act expressly upon the ground of the meritorious service and distinguished gallantry of the applicant in the destruction of the Albemarle. Lieutenant Cushing was the pride of the American Navy. Dan. George pulled the lanyard which immortalized them both and set an example for the imitation of future times, which will be more valuable than millions of money to the military service of the country. We believe this deed of bravery should be recognized, and we therefore recommend the passage of the act.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT 849, Part 2.

IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# VIEWS OF THE MINORITY:

[To accompany bill H. R. 1011.]

*The undersigned, a minority of the Committee on Pensions, submit the following report upon bill H. R.* 1011:

That Daniel G. George, after obtaining an invalid pension for the disability set forth in the majority report, in 1879 applied for and obtained arrears under the act of January 25, 1879. In 1880 he applied for an increase of pension on account of the original disability, but the application was rejected on the certificate of the examining surgeon, who, under date of October 18, 1880, certified there was no *increase* of disability, and that claimant was properly rated at $12 per month. He then applied to Congress for special relief, which is recommended by a majority of the committee on the sole ground of gallant and meritorious services rendered, with others, in blowing up the rebel ram Albemarle, in Plymouth Harbor, Pamlico Sound, on the night of October 24, 1864. There is no evidence on file with the papers or before your committee showing the distinguished services referred to in the majority report, except the *applicant's own statement* in a letter addressed to the Hon. Henry M. Blair, and bearing date July 19, 1877.

The undersigned think it would be going too far and establish a bad precedent to grant increases of pensions upon unsupported statements of applicants detailing their own exploits and gallantry. To pass the bill under such circumstances is simply to invite every dissatisfied pensioner to come to Congress for special legislation in his behalf, and in support of such application present his own account of his services. Applications for special relief are steadily on the increase, and if such bills as the present are passed will soon become exceedingly embarrassing to Congress. For these and other reasons that will readily suggest themselves the undersigned think the bill should not be passed.

HOWELL E. JACKSON.
JAS. H. SLATER.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 850.

# IN THE SENATE OF THE UNITED STATES.

JULY 22, 1882.—Ordered to be printed.

Mr. MITCHELL, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 6399.]

*The Committee on Pensions, to whom was referred the bill (H. R. 6399) granting a pension to Stephen D. Smith, having examined the same, report as follows:*

That the House Committee on Invalid Pensions have, at the present session of Congress, made a report correctly stating the facts, which your committee adopt as their own:

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 6399) granting an increase of pension to Stephen D. Smith, submit the following report:*

The applicant, lately a private in Company C, Seventh Regiment, New Hampshire Volunteers, now gets a pension of $24 per month by reason of a gunshot wound in the left leg, near the thigh, shattering the bone, July 18, 1863, in the assault on Fort Wagner, S. C., where he was taken prisoner and carried to a hospital in Charleston, S. C., and while there Confederate surgeons amputated the leg about 2½ inches below the hip joint.

Mr. Smith claims that the operation was carelessly performed, leaving the bone projecting some 2½ inches beyond the flesh, and that proper care of the leg was not taken afterwards, while he was a prisoner.

Later on, he was exchanged and sent to New York City, where his leg was found to be in such a condition that no further amputation could safely be made, and it was allowed to heal as it was. This condition of the leg has remained ever since. The projection of the bone renders it impossible for him to use an artificial leg, and he cannot sit as other people naturally do, because the bone being very tender causes the applicant severe pain whenever he attempts to sit. The result has been a painful and tender stump from the amputation to the present time. The Pension Office cannot give him an increase of pension under existing laws. If, however, the leg had been cut off at the hip joint, he would have been entitled to receive a pension of $37.50 per month.

Your committee find that a successful amputation at the hip joint would have left said Smith in a better condition than he has been or is now, or ever will be, for in that event he could have used an artificial limb, and would have been able to sit as comfortably as other people. The extreme tenderness of the stump, of which Mr. Smith complains, would also have been avoided. He is shown to be a good citizen, a worthy man, and poor; and your committee are unanimously in favor of allowing him the same pension he would have received if his leg had been amputated at the hip joint, viz, $37.50 per month.

Your committee, therefore, recommend that his pension be increased to that amount per month, and we report the accompanying bill (as a substitute for bill H. R. 4341), recommending its passage.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 851.

# IN THE SENATE OF THE UNITED STATES.

JULY 24, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 2112.]

*The Committee on Pensions, to whom was referred the bill (S. 2112) granting a pension to Lewis L. Cannaday, having examined the same, submit the following report:*

That on the 25th September, 1871, the said Lewis L. Cannaday filed his application for pension, under act of February 14, 1871, as a soldier in the war of 1812, claiming to have served the requisite period to entitle him to a pension. The rolls of the company (Capt. R. N. Appleby's) in which he claims to have served show that said Cannaday's services extended from the 5th to the 12th June, 1813—a period of eight days. There is no evidence to contradict this record except the statements of the application. The Commissioner of Pensions rejected the claim because of the insufficiency of the service under the law. There was no error in this action. There is nothing in the case to relieve it from the operation of the general law. Your committee recommend that the bill be indefinitely postponed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 852.

IN THE SENATE OF THE UNITED STATES.

JULY 24, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 4888.]

*The Committee on Pensions, to whom was referred the bill (H. R. 4888) increasing the pension of John F. Ellis, having examined the same, make the following report:*

That said Ellis enlisted December 25, 1861, as a private, in Company H, Eightieth Regiment Ohio Volunteers, and was discharged October 2, 1862.

On the 20th January, 1863, he filed his application for pension, alleging, as the basis of his claim, that on the 25th February, 1862, while on detail duty at Port Holt, Ky., for quartermaster, he was ruptured on both sides by lifting heavy boxes, &c. Upon investigation of the claim it was clearly established that he had received the injury as alleged, and the Pension Bureau granted him a pension of $4 per month from date of discharge, the rate of disability certified by the examining surgeons. Subsequently the premium was increased to $15 per month, from September 4, 1871, and to $18 per month from June 4, 1872. These increases were made upon certificates of examining boards, who reported increased disability, and rated same at $15 and $18 per month, at said respective dates. The claimant subsequently made another application for increase, which, upon examination and report by the examining surgeons, was rejected, in January, 1876. He again, thereafter, made another application for increase, which was rejected August 12, 1878. In the examining surgeon's report, under date of September 30, 1873, the pensioner's condition is thus described: "The protrusion is so large that the scrotum measures 13 inches in circumference and 9 inches from the body to the lower extremity," and the disability is rated at $18 per month. In a report made by the same examining surgeon under date of September 7, 1874, the disability is described as before, and still rated at $18 per month. In the same surgeon's certificate, under date of August 20, 1875, the claimant's disability is rated at $24 per month. The same surgeon, under date of February 1, 1876, reports pensioner's disability as follows: "The protrusion is so great that the scrotum on the left side measures 16 inches in circumference and 10 inches in length, and on the right side the circumference is 10 inches and the length is 7 inches," and rates the same at $18 per month. The same surgeon's next report, made September 24, 1877, is substantially the same as to condition of pensioner and rating of disability.

The next report of the same examining surgeon was made on the 5th June, 1878, and thus describes the pensioner's condition:

The rupture causes the left testicle to measure 11 inches in length and 18 inches in circumference, and the right testicle measures 7 inches in length and 12 inches in circumference. The hernia protrudes *occasionally*, and it is reduced with great difficulty.

Disability rated at $24 per month.

Upon these certificates, and the opinion of the medical referee of the Pension Bureau, the rejection of applications for increase in 1876 and 1878, as above stated, were *based*. The claimant made still another application for increase; and on the 6th November, 1878, was examined by a board of examining surgeons at Saint Joseph, Mo., who certified his condition, as follows:

We find an exceedingly large double hernia; the viscus protrudes with great freedom, and is *as readily* reduced. The left scrotal sack when full measures 13 inches in length, and is 18 inches in circumference; the right scrotal sack when full is only a trifle smaller. The viscus, when the prepuce is in the erect position, has to be supported by a bandage to relieve the sensation of dragging and distress which it occasions. After a very careful examination we hold it as our opinion that the applicant is unable to perform any manual labor; and do therefore recommend an increase of pension, rating his disability at second grade, or $24 per month.

The medical referee of the Pension Bureau did not concur in this recommendation for increase; but the increase was granted by the Commissioner, and the claimant's pension was raised to $24 per month, commencing November 6, 1878.

No other or further application has been made to the Pension Bureau; but the pensioner has applied to Congress for additional relief, and the present bill, as it passed the House, gives him $50 per month. The House Committee on Invalid Pensions, in their report upon the case to the present session of Congress, recommended an increase to $36 per month; but the bill passed the House at $50.

No new or additional evidence has been introduced in support of this appeal to Congress. The case stands here just as it did before the Commissioner of Pensions when the increase to $24 per month was made. Your committee find among the papers no medical examination later than that made by the board of surgeons on the 6th November, 1878, which reported $24 as the proper rating of claimant's disability; in which rating the medical referee of the Pension Bureau did not concur, being of the opinion that $18 per month was the proper rating. Whether the pensioner's disability has increased or diminished since November, 1878, does not appear. But, asuming that the disability remains the same, your committee are of the opinion that the pension should be increased to $36 per month, as reported by the House committee. The committee accordingly recommend that the bill be amended by striking out the word "fifty" in line 5 of the bill, and inserting in lieu thereof the words *thirty-six*, and adding after the word "month," in line 6, the following: *from and after the passage of this act;* and as thus amended that the bill be passed.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 853.

# IN THE SENATE OF THE UNITED STATES.

JULY 26, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 261.]

*The Committee on Pensions, to whom was referred the bill (S. 261) granting a pension to Mrs. Phebe W. Ross, have carefully examined the same, and report as follows:*

That the official record filed with the application shows that Samuel W. Ross, an officer of the United States Army, was retired with the full rank of brigadier-general, to date from January 1, 1871, under an act of Congress approved May 10, 1872, and was reduced to the rank of colonel March 3, 1875, under section 2 of an act of Congress approved at that date.

The report from the Adjutant-General shows that—

Col. Samuel Ross, United States Army, retired, was accidentally drowned in Osceola Lake, New York, on the morning of Sunday, July 11, 1880.

Phebe W. Ross is the widow of the said Samuel Ross, and filed her claim for a pension upon the official record of facts as stated above; and there is no other statement or testimony in the case.

It is clear that the claimant is not entitled to a pension under the law, as death did not occur in the line of duty; and there is no reason whatever stated why this case should be made an exception and a pension granted to the claimant. The committee therefore recommend that the bill do not pass.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 854.

# IN THE SENATE OF THE UNITED STATES.

JULY 26, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 703.]

*The Committee on Pensions, to whom was referred the bill (H. R. 703) granting an increase of pension to Mary E. Ryan, having considered the same, report as follows:*

That the Committee on Invalid Pensions, House of Representatives, have at the present session of Congress made a report in this case as follows:

*The Committee on Invalid Pensions, to whom was referred the bill (H. R. 703) granting an increase of pension to Mary E. Ryan, beg leave to submit the following report:*

Mary E. Ryan is the widow of George P. Ryan, who bore the rank of commander in the United States Navy. Your committee find that said George P. Ryan enlisted in the service of the United States on the 30th day of September, 1857, and was continually in the service up to his death; that he received the rank of commander of the Navy October 3, 1874. He was faithful in the discharge of every duty, and ready to obey every command of his superior officers or his country. Such was his fidelity in the discharge of duty that he leaves a name without spot or blemish. In addition to the widow, who makes this application for an increase of pension, he left three minor children, born respectively July 16, 1871, February 23, 1876, and April 24, 1877. One other child survived him, but died February 15, 1878. His widow and children are left comparatively destitute, and are dependent upon the pension they receive from the government for support.

Your committee find, further, that financial misfortunes have recently overtaken some of those upon whom she could and did rely for assistance. The pension received is inadequate to the maintenance of the family left.

Your committee recommend the passage of the bill with this amendment: Strike out the word "extra," in line eight, and insert these words, "to be paid out of the naval pension fund."

Your committee agree with all that is said in the House report regarding the services of Commander George P. Ryan, but inasmuch as the committee have only reported favorably for an increase to $50 in cases of higher rank than commander, and where the services have continued for nearly half a century, your committee cannot see their way clear to recommend the passage of the bill for Mrs. Ryan, and therefore report adversely thereon.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 855.

# IN THE SENATE OF THE UNITED STATES.

JULY 26, 1882.—Ordered to be printed.

Mr. MAXEY, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1267.]

*The Committee on Military Affairs, to which was referred the bill (S. 1267) to correct the Army record of certain officers named therein, respectfully submits the following report:*

A careful consideration of the subjoined documents, to wit, the letter of the Acting Secretary of War, of date 21st July, 1882, marked Exhibit A, and of the communication of the Adjutant-General of same date, with accompanying documents, marked Exhibit B, satisfies the committee that the relief asked ought not to be granted. Wherefore the committee reports back said bill with recommendation that it do not pass.

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EXHIBIT A.

WAR DEPARTMENT,
*Washington City, July 21, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 2d instant, inclosing S. 1267, Forty-seventh Congress, first session, a bill to correct the Army record of Lewis Downing, late lieutenant-colonel of the Third Regiment of Indian Home Guards; Evan Jones, late chaplain of the First Regiment of Indian Home Guards, and James McDaniel, late captain of the Second Regiment of Indian Home Guards.

In reply to your request for such information as the records of the department may afford pertinent to said bill, I beg to invite your attention to the inclosed report on the subject, dated the 21st instant, from the Adjutant-General, which is believed to contain the information desired.

Very respectfully, your obedient servant,

WM. E. CHANDLER,
*Acting Secretary of War.*

Hon. S. B. MAXEY,
*Of Committee on Military Affairs, United States Senate.*

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EXHIBIT B.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
*Washington, D. C., July 21, 1882.*

SIR: I have the honor to submit herewith letter of the Hon. S. B. Maxey, of Committee on Military Affairs, United States Senate, inclosing a bill (S. 1267) to correct the Army record of certain officers of Indian Home Guards named therein, and request-

ing to be furnished with such information as the records may afford pertinent to the bill, and to report as follows:

Lewis Downing was mustered into service as lieutenant-colonel Third Regiment Indian Home Guards, to date from September 16, 1862. He is reported on the rolls of field and staff of the regiment to March 31, 1863, "present"; from March 21, 1863, to December 30, 1863, "absent on detached service at Washington, D. C."; from December 30, 1863, to June 30, 1864, "absent without leave since December 30, 1863, at Washington, D. C.," and from June 30, 1864, to muster-out of regiment, March 25, 1865, "present, under arrest at Fort Gibson, C. N., since August 30, 1864."

Evan Jones is reported on the rolls of field and staff of the First Regiment Indian Home Guards, as enrolled May 12, 1862, and as chaplain from the date of the organization of the regiment, May 22, 1862, but there is no evidence of his muster-in as such. He is reported on rolls of field and staff of the regiment to June 30, 1862, "present," and from June 30, to August 31, 1862, "absent, leave of absence." His name is dropped from August 31, 1862, to roll for May and June 1863, when it again appears with remark, "taken up on rolls by order of Colonel Phillips, having been dropped without authority by Adjutant Gelpatrick. Absent on detached service by Special Orders 73." From July 1, 1863, to January 31, 1864, he is reported "absent by orders from Headquarters Department Missouri, Special Orders No. 73, since February 28, 1863," and subsequently reported "absent without leave since January 20, 1864."

James McDaniel was mustered into service as captain Company A, Second Regiment Indian Home Guards, to date from June 22, 1862. He is reported on rolls of company to February 28, 1863, "present"; from March 1, 1863, to December 31, 1863, "absent on detached service since March 5, 1863"; from January 1, 1864, to August 31, 1864, "absent without leave since January 1, 1863"; roll for September and October 1864, "present, in arrest, by order of Colonel Wattles, commanding Indian brigade, since October 10, 1864," and subsequently reported "absent without leave since January 1, 1863."

Attention is invited to the following copy of a report from this office, dated June 14, 1864, which embraces the facts in the cases of these officers up to that date:

"WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
"*June* 14, 1864.

"Respectfully submitted to the Secretary of War.

"In accordance with Special Orders No. 60, Headquarters District of Kansas, Fort Leavenworth, Kans., March 25, 1863, issued by Major-General Blunt, Lieutenant-Colonel Downing, Captain McDaniel, and Chaplain Jones, of the Indian Home Guards, came to this city as a delegation from the Cherokee Nation. When they arrived they made claim for pay. The claim was brought to the attention of the Secretary, who declined issuing any order for their payment, and decided that the order of General Blunt was irregular, and ordered his pay to be stopped for the amount of their expenses in coming to this city. It was reported by the Quartermaster-General that transportation had not been furnished by the United States; the stoppage was therefore removed.

"The claim for pay was made in June, 1863, and it was presumed that, upon the same being disallowed, that the officers had returned to their commands.

"It appears, however, that they are still in this city, but under what authority is not known to this office. They are now reported absent without leave. (A. 478, V. S., 1864, herewith.)

"Since the refusal, in the first instance, of the War Department to pay them, a like refusal through the Secretary of the Interior has been made. They have also applied repeatedly, through claim agents and other parties, but refusal has been the result.

"Their claim at this time will amount to about $7,255, and it is recommended that, instead of its being recognized and allowed, the parties be mustered out of service as of the date (March 25, 1863) they were ordered to this city by Major-General Blunt.

"Their connection with the military service will thus cease, and for the long time (nearly fifteen months) they have rendered no military service to the government they will be deprived of pay.

"THOMAS M. VINCENT,
"*Assistant Adjutant-General.*"

January 23, 1865, the attorney in the cases called the attention of the department to the fact that no action had been taken on the recommendation of the Adjutant-General, as made in his report of June 14, 1864. Thereupon, by direction of the Secretary of War, Lieut. Col. Lewis Downing, Chaplain Evan Jones, and Capt. James McDaniel were mustered out and discharged the service on February 7, 1865, in special orders from this office, to date March 25, 1863, the date they were irregularly ordered to Washington, D. C., by Major-General Blunt.

I am, sir, very respectfully, your obedient servant,

R. C. DRUM,
*Adjutant-General.*

The Hon. the SECRETARY OF WAR.

(A. 478, V. S., 1864.)

HEADQUARTERS OF THE ARMY,
*Washington, June* 6, 1864.

SIR: By direction of Major-General Halleck, chief of staff, your attention is called to the following extract from inspection report of district of the frontier for month of April, 1864, viz:

* * * * * * *

*Officers absent without authority.*

Lieut. Col. Lewis Downing, Third Indian Home Guards, since December 30, 1863.

* * * * * * *

Chaplain Evan Jones, First Indian Home Guards, since January 24, 1864.
Capt. James McDaniel, Second Indian Home Guards, since January 1, 1864.

Very respectfully, your obedient servant,

ROBERT N. SCOTT,
*Captain Fourth U. S. Infantry, A. D. C.*

ADJUTANT-GENERAL, U. S. ARMY.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 856.

# IN THE SENATE OF THE UNITED STATES.

JULY 26, 1882.—Ordered to be printed.

Mr. HAWLEY, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 2014.]

*The Committee on Military Affairs, to whom was referred the bill (S. 2014) authorizing compensation to members of Company B, Fourteenth Infantry, United States Army, for certain private property destroyed by fire, having had the same under consideration, report as follows:*

That on the 14th day of August, 1869, Lieut. Col. Guido Ilges and certain others, officers and men of Company B, Fourteenth Infantry, with their baggage and sundry articles of public property, were being conveyed, by order of proper military authority, by the Nashville and Chattanooga Railroad Company, under a contract made by said railroad company with the United States, from Nashville to Chattanooga; that at Murfreesborough, Tenn., while in transit as aforesaid, the car containing said baggage and public property, while in charge of the agents of said railroad company, and through their negligence, was, together with the baggage of said officers and men and said public property, destroyed by fire.

The officers and men, by direction of the Quartermaster-General, prepared itemized accounts of their losses, substantiated them by affidavit and the certificate of the commanding officer, and forwarded them to General Meigs, January 3, 1870. The Secretary of War, February 5, 1870, directed that officer to take measures to collect the amount of the losses from the company. General Meigs directed a stoppage of the amount of the losses, ascertained by him—$5,723.29 for officers and men, and $1,397.33 for public property destroyed—against the transportation accounts of the railroad company, and referred the claims to the Third Auditor, with a recommendation for payment. The Third Auditor had doubts of his jurisdiction to liquidate the claims, and his scruples on this point have been the sole cause of the long delay in their settlement.

The Second Comptroller, Mr. Brodhead, on the contrary, strongly asserted the jurisdiction of the accounting officers of the Treasury.

The Secretary of the Treasury concurred with the Second Comptroller. In a letter to the Third Auditor, June 21, 1870, Secretary Boutwell said:

> I suggest that the case be settled by your deducting the value of goods lost from the amount found due the company. If the company is dissatisfied with this settlement, they still have the right to refuse to accept payment and carry their case to the Court of Claims.

November 14, 1871, General Meigs wrote to the Third Auditor:

> I do not consider that these sufferers have individually any authority to enter suit against the railroad company. *It has* been taken from them and assumed by the War

Department. They were at the time the servants of the War Department, and that department being satisfied that their claims were just has taken upon itself to see that they are righted.

The Court of Claims is open to the company if they should consider themselves wronged.

I think that the strong arm of the government should be brought into requisition to cope with this powerful corporation.

Judge-Advocate-General Holt, in an opinion delivered January 9, 1872, suggests to the Secretary of War that the passage of an act of Congress be procured indemnifying the claimants in amounts not exceeding a certain sum, or in such amounts as might be deemed just by the Secretary of War. (A bill (S. 618) was introduced at the second session of the Forty-second Congress, and passed that body April 9, 1872, but was not reached in the House of Representatives.) Judge Holt concludes:

In the view thus arrived at it is further held that the United States, having itself contracted for the entire transportation, for the price of which it became immediately responsible, was the only party in privity with the company, and has, therefore, a just claim against the latter for the proper and reasonable value of all property lost.

The company having advanced some objections to the claims, General Meigs made a second and thorough examination, which he reported to the Secretary of War February 5, 1874. He wrote the railroad company for full information as to the circumstances attending the losses, caused a re-examination of the officers and men present at the fire and still to be found, and submitted to the company, for their examination, the statement of the officer in command of the troops at the time of the fire. General Meigs said:

The weight of testimony is to the conclusion that the fire originated from sparks from the engine, and the position of the car in the train being next after the tender to the locomotive adds weight to the testimony on this point, and I think there can be no reasonable doubt that the fire originated in this way.

This report further states that the charges made by the enlisted men are found to conform generally to the prices at which army clothing was then issued; that the officers adhere to the charges which they had originally made and supported by their oaths, and that the passenger tariff of the railroad company did not restrict the passenger as to articles of baggage.

April 29, 1874, Judge-Advocate-General Dunn having received this report of General Meigs, in an opinion delivered to the Secretary of War asserts the liability of the company to the government, as common carriers, and renews the suggestion of his predecessor, General Holt, as to providing for a settlement with the claimants by special act of Congress.

January 17, 1878, the Secretary of War, Hon. George W. McCrary, called upon the Judge-Advocate-General for opinion upon the following points:

1st. Is it the duty of this department to continue longer to retain the money withheld from the railroad company to meet the claims of officers and soldiers for loss of baggage?

2d. Does it appear from the papers now filed that proper legal steps have been taken by said officers and soldiers to have the amount of their several claims liquidated and determined, so that they can be properly paid by the United States?

January 21, 1878, Judge-Advocate-General Dunn, in reply, says:

I am of opinion that the United States is entitled to offset against the amount due to the company for transportation, the reasonable value of the proper baggage of the military detachment lost by the fault of the company in August, 1869. The contract of the company was made not with the individual parties, but with the United States, for the transportation not only of public property, but of the proper effects of its em-

ployés and servants, the troops in question. Between the company and the latter there was no privity of contract; indeed they had no right or power to contract, but were obliged to accept and abide by such contract as the United States should make for them. I think, therefore, that the company is equally liable to the United States for the proper personal baggage of these parties as for any public property lost by its fault.

2d. It does not appear that any legal steps have been taken by the officers or soldiers in this case to have their claims liquidated or determined. But, in my judgment, they are not properly called upon to take such steps in regard to the loss of property which they were entitled to have transported by the United States, but it is for the United States to assume and make good the same.

February 4, 1878, the Secretary of War again referred these claims to the Second Comptroller, with this indorsement upon the last report of the Judge-Advocate-General:

Respectfully referred, &c., in order that the matters involved may be duly and properly adjusted.

There the claims have since lain, laboring under the identical embarrassment which met them at the outset, the conviction of the accounting officers that they have not jurisdiction to liquidate the claims. In this connection is submitted a recent indorsement of the Second Comptroller:

Claim of Lieut. Philo. Schultze and others.—No. 20497.

TREASURY DEPARTMENT, SECOND COMPTROLLER'S OFFICE,
*Washington, D. C., June* 10, 1882.

Respectfully returned to the honorable Third Auditor:

While, in my opinion, the accounting officers are fully justified in withholding payment of the Nashville and Chattanooga Railroad Company, until such time as they shall deal justly with the claimants, I am unable to perceive (notwitstanding the recommendation of the Quartermaster-General and the favorable reports of Judge-Advocate-Generals Holt and Dunn) how any balance can be certified against the United States in favor of the claimants without adequate legislation by Congress in the premises.

The claims being for unliquidated damages for the destruction of said property are not, under existing law, within the jurisdiction of the accounting officer.

W. W. UPTON,
*Comptroller.*

A true copy.

JAS. S. DELANO,
*Deputy.*

It appears that the facts of the losses claimed for, the responsibility for the same, and the value of the articles lost, are established, firstly, by the sworn statements of the officers and men; secondly, by two separate and searching investigations, under the direction of the Quartermaster-General, in which the railroad company was twice invited to participate.

The Quartermaster-General, having a thorough belief that the claims were just, and having, under the direction of the Secretary of War, taken the whole matter of their collection out of the hands of the claimants and assumed it himself, strongly recommended their payment.

Judge-Advocate-General Holt and Judge-Advocate-General Dunn, having reviewed the claims, both assert the liability of the government to the claimants, and recommend legislation for their relief similar to that proposed by this bill.

The claimants, if they at any time had a right of action against the railroad company (and both the Judge-Advocate-Generals intimate that they had not, as the contract of the company was with the government and not the soldiers), *have none now*, as the War Department has assumed the collection of the claims and kept them until they are now barred in the courts by the statute of limitations.

The losses occurred nearly thirteen years ago, the money for their payment has been stopped against the transportation accounts of the railroad company, and has lain in the Treasury through nearly that entire time.

Seven of the claimants have died, including Lieutenant Schultze, who was acting for all of them in the presentation of the claims; the others have been, and some of them now are, stationed at distant and separate posts, rendering concerted action difficult and personal attention impossible.

Efforts at settlement with the company personally, by claimants, and through the Department of the Treasury have failed.

It is thought right, therefore, that the government should come to the relief of these soldiers, whose servants they were at the time of the losses, who were moving under orders of competent military authority and under government contract.

The accounting officers of the Treasury, as appears from a letter of the Second Comptroller of June 10, 1882, while deeming it proper to estop against the railroad company the funds for the payment of these claims, express embarrassment as to authority to make payment under existing law.

The committee recommend that the second section be stricken out and a proviso added to the first section in these words: "That the accounting officers of the Treasury shall charge the amount so paid to said officers and soldiers to said railroad company and retain the same out of any money due or that may hereafter be due from the United States to said railroad company"; and, as so amended, the committee recommend that the bill be passed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 857.

# IN THE SENATE OF THE UNITED STATES.

JULY 26, 1882.—Ordered to be printed.

Mr. CAMDEN, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 1103.]

*The Committee on Pensions, to whom was referred the bill (H. R. 1103) granting a pension to Margaret Kearns, have examined the same, and report:*

That they adopt so much of the House report made in this case as follows, viz:

It appears from an examination of the papers in the case on file in the Pension Office that the petitioner is the mother of James Kearns, sergeant Company G, Ninety-fourth New York Volunteers, who died July 20, 1864, at Petersburg, Va., of wounds, at the time serving out a re-enlistment.

The petitioner filed application May 18, 1868, which was rejected November 7, 1871, by the Pension Office, on the ground, "As claimant was not dependent upon her son at his death, the claim is rejected."

There is a long affidavit filed by the claimant, and a large number of persons testify in the case. From them we glean these facts: That at the time of the soldier's death his mother was in a great measure dependent upon him for support, as her husband was suffering with rheumatism and weak eyes, as shown by L. McKay, M. D., June 3, 1869, who says he has "this day made a careful examination of Dennis Kearns, father of James Kearns, who was a sergeant in Company G, Ninety-fourth New York Volunteers, and who died in the service." Deponent further says that he has attended and prescribed for said Dennis Kearns for over eight years last past; that during said time he has treated said Kearns for fever and ague, rheumatism, and weak eyes—the two latter he is now suffering—and chronic troubles on account of old age and infirmities.

Eliza O. Grady testifies that she has been acquainted with claimant's family over thirteen years, and that before enlistment James Kearns was a shoemaker and worked at his trade, and that she knows of her own knowledge that he contributed what was necessary out of his earnings to the support of his father and mother.

Margaret Ryan, another neighbor, corroborates the evidence of last witness. Mrs. Margaret McNearey and Ann McMeniman, in a joint affidavit, testify substantially to the same facts.

There is an original letter among the papers from the deceased soldier, dated Rappahannock Station, August 18, 1882, addressed—

"Dear Parents: This day, by the chaplain of our regiment, I send you $20, by Adams Express."

The soldier's remittances seem to have helped the old people to get a small domicile for their declining years.

Your committee further find, from the sworn affidavit of claimant, on file in the papers, dated on the 30th September, 1870, that up to the date of enlistment of her son James, neither the claimant nor her husband had property of any kind, except a small amount of household property, and that after the enlistment of the soldier the parents purchased a house and lot which was paid for out of the bounty and pay of the soldier. That claimant, in addition to the bounty received, also, after the

death of the soldier, received over $300 back pay, which was expended in repairs and additions to said property, making it worth, at the date of the affidavit, about $800.

It further appears that Dennis Kearns, the husband of the claimant, was employed at the date of the enlistment of the son as watchman on a railroad at $25 per month, which was subsequently increased to $30, $35, and $40 per month, and was receiving $1.37 per day at the date of said affidavit.

It also appears that claimant has three other children who resided with her at the date of said affidavit, and all contributed to the support of the family by paying board out of their wages.

Your committee are of opinion, from the evidence on file, that claimant was not dependent upon her son for support at the time of his death, and that there is no good reason for reversing the action of the Commissioner of Pensions in this case, and therefore recommend the indefinite postponement of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 858.

# IN THE SENATE OF THE UNITED STATES.

JULY 26, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 1722.]

*The Committee on Claims, to whom was referred a bill for the relief of E. Remington & Sons, having examined the same, make the following report:*

That E. Remington & Sons, of New York, as manufacturers of fire-arms, chiefly for export, prior to 1879, *imported* certain material for use and which was used in the manufacture of fire-arms. On this material they paid the proper customs duties. The fire-arms manufactured from this imported material were by them exported in 1879 and 1880, when they claimed the drawback duty allowed in such cases. The claim was rejected, for the reason that at the time of the exportation it was the *rule* of the Treasury Department that no drawback could be allowed under section 3019 of the Revised Statutes, unless the materials entering into the manufacture of the merchandise were imported within three years from the date of exportation of the manufactured article. Remington & Sons, in consequence of this rule, filed no drawback entries. It was useless to do so. This ruling of the Treasury Department has since been declared illegal and void by the law officers of the government, but the department has not felt authorized to waive its general regulations limiting drawback to cases where proper entries had been made, and Remington & Sons therefore apply to Congress for relief.

The following letter of the Secretary of the Treasury to Hon. Warner Miller, under date of April 4, 1882, gives a correct statement of the case:

TREASURY DEPARTMENT, *April* 4, 1882.

SIR: I have received the letter of Messrs. E. Remington & Sons, which you referred to this department, under the date of the 31st ultimo, in regard to their claim for drawback on certain arms exported by them.

The reasons why the claim was not paid in the regular manner were, first, that at the time of the exportation it was the rule of this department that no drawback could be allowed under section 3019 of the Revised Statutes unless the materials entering into the manufacture of the merchandise were imported within three years from the date of exportation of the manufactured article, and second, *that no drawback entries were filed in these particular cases, the parties alleging, and it is undoubtedly true, that the reason the drawback entries were not filed was that it seemed useless to file such entries in view of the rule,* the materials having been imported more than three years. *The rule was, however, subsequently revoked by an opinion of the Attorney-General;* still, in the absence of the drawback entries, the department did not feel authorized to waive its general regulations limiting drawback to cases where proper entries had been made.

I am informed that since the passage of the drawback law of 1861, it has been the unvarying rule of this department to refuse allowance of drawback where entries

for exportation were not filed, regardless of the reasons which led to the failure to file such entries. In the case of the Sone and Fleming Manufacturing Company, of the city of New York, a claim for drawback was rejected, for the reason that drawback entries were not filed, the clerk of the company who was intrusted with the fees and the duty of making entries having stolen the fees and failed to perform his duty. A bill, No. 1982, was introduced in the third session of the Forty-sixth Congress for their relief, and it is understood is now before the Committee on Claims in the United States Senate.

It is suggested that the claim of Messrs. E. Remington & Sons, which is an equitable one, be incorporated in the bill for the relief of the Sone and Fleming Manufacturing Company. Messrs. Remington & Sons have been requested to furnish full details of the claims either to you or to this department.

Very respectfully,

CHAS. J. FOLGER,
*Secretary.*

Hon. WARNER MILLER,
*United States Senate.*

As shown by certificate of the collector of customs at New York, the drawback duty on the 22 export shipments made by Remington & Sons amounts to the sum of $5,672.15, which amount, less 10 per cent. as provided by section 3019 of the United States Revised Statutes, should, in the opinion of your committee, be returned to E. Remington & Sons, who it appears failed and neglected to file the proper drawback entries in consequence of the foregoing erroneous ruling of the department, which covered the case of the imported material used by them. In the opinion of your committee Messrs. E. Remington & Sons are entitled to the same relief which, at the present session of Congress, they have recommended in the case of the "Sone & Fleming Manufacturing Company." (See Report 177.)

The committee recommend the following amendments: Strike out the words "six thousand" in line 11 of the bill, and insert "five thousand six hundred and seventy-two $\frac{15}{100}$," and add at end of line 12 the following, "less 10 per cent. thereof as provided by section 3019 of the Revised Statutes;" and as thus amended they recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 859.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 6317.]

*The Committee on Pensions, to whom was referred the bill (H. R. 6317) granting a pension to James Bennett, have considered the same, and report as follows:*

That the House Committee on Invalid Pensions have, at the present session of Congress, made a report in this case as follows:

James Bennett enlisted December 20, 1863, and was discharged from Company L, Second Regiment New York Cavalry, April 19, 1865, upon surgeon's certificate of disability because of gunshot wound of face, destroying the sight of the right eye and injuring that of the left; also gunshot wound of left shoulder, producing loss of motion. First wound inflicted by Mosby's men near Berryville, Va., the other received previously in action.

It appears that the claimant, with others of his command, were captured by Mosby's men while on a scouting expedition under Colonel Hull, and were taken to his headquarters. They were kept there until after dark, when they were taken out into the woods to be hanged. Three of the party were hanged, but, the executioners getting short of rope, the remainder were given the choice of being hung or shot. Death by shooting being preferable, preparations therefor commenced. One of the party succeeded in getting away, which enraged the officer in charge of the execution squad, who came up to the claimant, and, after cursing him, placed his revolver to the side of claimant's face and shot, the ball entering below left eye and coming out through right. Claimant was left on the ground as dead, and after shooting the rest of the party the guerrillas rode away. He remained in the woods until the afternoon of the following day, when he made his way to a house, where he received kind treatment until he was removed to the Winchester hospital.

Claimant was originally pensioned at $8 per month, which rate was subsequently increased to $15, $18, $24, and $31.25, which latter rate he is now receiving.

The medical referee of the Pension Office, on a recent official visit in claimant's neighborhood, had his attention called to the man's condition, and at once gave him a very careful medical examination, which convinced him that the rate allowed was entirely inadequate to the degree of disability existing in the case, but that, inasmuch as the pension laws could not afford relief because total blindness does not exists, Congress alone could grant assistance.

In a letter addressed to a member of this committee, the medical referee says:

"You will perceive that this is a very extraordinary case. For many months his life has been despaired of, and ever since his recovery from the immediate effects of his wounds he has been a deformed wreck of manhood. The right eyeball was destroyed by the shot, which passed directly through it. There is yet a constant discharge of pus from a sinus leading to carious bone, just below the external canthus of the left eye; there is marked ectropiæ lower lid left eye; vision is almost wholly destroyed, and the deformity of the face is so great as to excite the pity of every beholder; and of course all the more when it is known when and how and why it was incurred. Both (right and left) ophthalmic divisions of the fifth pair of nerves were involved, and the pain at times frightful. I am sure that could he be brought face to face with the gentlemen of both houses, there would not be a dissenting opinion as to his title to the highest rating given ($72) under the general laws. He is as modest and unassuming as he was brave and patriotic during the war, and I

most earnestly hope that the facts will so enlist your sympathy and sense of justice as to induce you to actively interest yourself in his case and procure the prompt pasage of a bill giving him the amount per month above named."

Since the above has been written, the claimant has presented himself before this committee, and his general appearance and condition fully confirms the representation of the case by the medical referee.

It is surely an exceptional case, and not being adequately provided for by the general pension laws, the committee is clearly of opinion that the relief asked for should be granted by special legislation, and therefore reports favorably on the bill and asks that it do pass, amended, however, by striking out the words "seventy-two" in line seven, and inserting instead the word "fifty."

The facts are correctly stated in this report, and your committee adopt this report as their own.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 860.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 6521.]

*The Committee on Pensions, to whom was referred the bill (H. R. 6521) granting a pension to Adeline A. Turner, having considered the same, report as follows:*

That at the present session of Congress the House Committee on Invalid Pensions have made a report correctly stating the facts, which your committee adopt as their own, and recommend the passage of the bill. The House report is as follows:

Mrs. Adeline A. Turner, of Boston, Mass., a widow, asks for a pension on account of the death of her adopted son, Capt. Joseph S. Hills, of the Sixteenth Massachusetts Volunteers, who was killed at the battle of the Wilderness, May 6, 1864. He was enlisted and was mustered July 12, 1861, for three years. He was promoted from first sergeant to be second lieutenant August 11, 1862; to be first lieutenant November 10, 1862, and to be captain May 6, 1863. Had he lived two months and six days his three years' service would have been completed.

The proof is full and decisive that Mrs. Turner was chiefly dependent upon Captain Hills for her maintenance and support, and he sent her money from time to time while in the Army for that purpose, and Prof. Francis L. Hills, of the Maine State College, certifies that Mrs. Turner filled the place of a faithful mother to Captain Hills from his childhood to man's estate, and that even before the war he contributed the greater portion of his earnings for her support.

This case cannot receive favorable action at the Pension Office because the general pension laws do not allow a pension to a dependent mother on account of the death of an adopted son. Mrs. Turner is poor, and in view of the facts above stated, we think, in equity and conscience, she is as much entitled to a pension as any natural mother would be. Your committee recommend the passage of the accompanying bill (which we report as a substitute for the bill H. R. 704), providing that Mrs. Turner's name be placed on the pension roll as a dependent mother, subject to the provisions and limitations of the pension laws.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 861.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5985.]

*The Committee on Pensions, to whom was referred the bill (H. R. 5985) granting a pension to Martha J. Douglas, report as follows:*

The committee have fully examined the facts in the case, and find they are correctly stated in the House report, as follows:

Martha Jane Douglas filed an application for pension at the Pension Office on the 21st day of February, 1876, alleging that she is the widow of John T. Douglas, who enlisted at Corinth, Miss., July 6, 1863, in Company B, Third West Tennessee Cavalry, and who was captured by the enemy at Como, in the State of Tennessee, in an engagement on the 7th day of October, 1863, and died February 25, 1864, while a prisoner of war at Danville, Va.

The Adjutant-General of the United States Army has no record of such an organization as the Third West Tennessee Cavalry.

William H. Cariness testifies that he was a surgeon in Company C of the Seventh Tennessee Cavalry; was at Corinth, Miss., July 6, 1863, and saw John T. Douglas sworn into the United States service in Company B, Second West Tennessee Cavalry. Drew arms and clothing from United States Government, and on the 7th of October, 1863, at Como, Tenn., in an engagement with the Confederates, Douglas and the affiant, with others, were captured and sent to Danville, Va., where said Douglas was taken sick. Affiant was with him in his sickness up to the 14th February, 1864, when he (Douglas) was moved back to the main building, where, as he was informed subsequently by a nurse, he died on the 25th of February, 1864.

The company and regiment to which Douglas belonged was so completely broken up by the defeat at Como that it was never fully reorganized, and the men were distributed and assigned to other companies and regiments. Affiant was assigned to company and regiment aforesaid, and mustered in from the 6th day of July, 1863, the date on which himself and Douglas originally enlisted.

N. V. Wilson makes oath that he was present at Corinth, Miss., July 6, 1863, when said Douglas was sworn into Company B, *Second* West Tennessee Cavalry; was also present in engagement at Como when he was captured, and saw him taken off as a prisoner. Affiant never saw him afterwards, but was informed by some one that he died in a Confederate hospital, February, 1864. Affiant enlisted with Douglas, and was afterwards assigned to Company A, Seventh Tennessee Cavalry.

The Surgeon General reports that the Confederate hospital records of Danville, Va., show that private J. *F.* Douglas, Company B, Third Tennessee Cavalry, died at said hospital February 26, 1864, of chronic diarrhea.

The claim has been rejected by the Pension Office because there is no record evidence of the soldier's enlistment, and the Adjutant-General has declined to make a record of the services upon the evidence presented.

In view of these facts the committee report the accompanying bill, with the recommendation that it do pass with the following amendment: Add at the end of the bill, "To take effect from the passage of this act."

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 861.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5985.]

*The Committee on Pensions, to whom was referred the bill (H. R. 5985) granting a pension to Martha J. Douglas, report as follows:*

The committee have fully examined the facts in the case, and find they are correctly stated in the House report, as follows:

Martha Jane Douglas filed an application for pension at the Pension Office on the 21st day of February, 1876, alleging that she is the widow of John T. Douglas, who enlisted at Corinth, Miss., July 6, 1863, in Company B, Third West Tennessee Cavalry, and who was captured by the enemy at Como, in the State of Tennessee, in an engagement on the 7th day of October, 1863, and died February 25, 1864, while a prisoner of war at Danville, Va.

The Adjutant-General of the United States Army has no record of such an organization as the Third West Tennessee Cavalry.

William H. Cariness testifies that he was a surgeon in Company C of the Seventh Tennessee Cavalry; was at Corinth, Miss., July 6, 1863, and saw John T. Douglas sworn into the United States service in Company B, Second West Tennessee Cavalry. Drew arms and clothing from United States Government, and on the 7th of October, 1863, at Como, Tenn., in an engagement with the Confederates, Douglas and the affiant, with others, were captured and sent to Danville, Va., where said Douglas was taken sick. Affiant was with him in his sickness up to the 14th February, 1864, when he (Douglas) was moved back to the main building, where, as he was informed subsequently by a nurse, he died on the 25th of February, 1864.

The company and regiment to which Douglas belonged was so completely broken up by the defeat at Como that it was never fully reorganized, and the men were distributed and assigned to other companies and regiments. Affiant was assigned to company and regiment aforesaid, and mustered in from the 6th day of July, 1863, the date on which himself and Douglas originally enlisted.

N. V. Wilson makes oath that he was present at Corinth, Miss., July 6, 1863, when said Douglas was sworn into Company B, *Second* West Tennessee Cavalry; was also present in engagement at Como when he was captured, and saw him taken off as a prisoner. Affiant never saw him afterwards, but was informed by some one that he died in a Confederate hospital, February, 1864. Affiant enlisted with Douglas, and was afterwards assigned to Company A, Seventh Tennessee Cavalry.

The Surgeon General reports that the Confederate hospital records of Danville, Va., show that private J. *F.* Douglas, Company B, Third Tennessee Cavalry, died at said hospital February 26, 1864, of chronic diarrhea.

The claim has been rejected by the Pension Office because there is no record evidence of the soldier's enlistment, and the Adjutant-General has declined to make a record of the services upon the evidence presented.

In view of these facts the committee report the accompanying bill, with the recommendation that it do pass with the following amendment: Add at the end of the bill, "To take effect from the passage of this act."

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 862.

IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. CHILCOTT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 2966.]

*The Committee on Pensions, to whom was referred the bill (H. R. 2966) granting a pension to Annie W. Osborne, having considered the same, report as follows:*

That the House Committee have, at the present, reported favorably upon the case; the report correctly sets forth the facts, and your committee adopt this report as their own. The House report is as follows:

The claimant, Annie W. Osborne, is the widow of John W. Osborne, who was mustered into the United States service August 27, 1862, as a private, Company E, Thirty-sixth Massachusetts Volunteer Regiment, and mustered out on the 19th of June, 1868. He re-enlisted June 22, 1868, and was stationed at the post hospital, Fort Ripley, Minnesota, from July 11, 1869, to October 28, 1870, when he died, having been accidentally shot under the following circumstances: Near the barracks at Fort Ripley there was a target, at which the officers and enlisted men stationed at said post practiced in firing with muskets and revolvers after guard-mounting and at other odd times; that on the 28th day of October, 1870, said Osborne and his brother were firing at said target, and while so engaged, was fatally wounded, dying in a few hours after receiving the shot.

The claimant made application for a pension, which was rejected on the ground that the soldier was not in the line of duty when he received the shot which caused his death. Application was made to the Forty-fifth Congress for claimant's relief, which was favorably reported by the Committee on Invalid Pensions. The committee were of opinion that the soldier was in the line of duty at the time he was shot.

This committee, after considering the matter, and taking into consideration the long term of service of the soldier and the dependent condition of the claimant, with her three children, think it but just to grant the relief asked for. Therefore we report the bill back to the House, with the recommendation that it do pass, with amendment that the pension take effect from and after the passage of the act.

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 863.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3414.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3414) granting a pension to Sarah J. Cameron, have examined the same, and submit the following report:*

That the House Committee on Invalid Pensions have at the present session made a report. Your committee adopt so much of that report as is hereto attached.

It appears from the papers on file in the Pension Office that the claimant is the widow of Henry A. Cameron, who was a private in Company C, Twenty-fifth Regiment Missouri Enrolled Militia. The record of the adjutant general of the State of Missouri shows that Cameron was enrolled on the 29th day of July, 1862; was relieved from service September 12.

The captain of the company testifies that Cameron was a sound and able-bodied man at the time of his enlistment, and that he died on the 24th of September, 1862, while at home on sick furlough; that the company was ordered on duty by the commanding officer of the United States forces in that section of the State to guard the Hannibal and Saint Joseph Railroad bridge over the Platte River, near Saint Joseph, Mo.

Burr H. Cox, surgeon of the regiment, the attending physician of the soldier, makes oath that the latter was under his treatment from the 19th to the 24th day of September, 1862, for typhoid fever, contracted in the service and in the line of his duty, and that he died of the said disease; also, that the soldier, at the time of his enlistment, was an able-bodied and sound man. The claim has been rejected by the Pension Office because there is no provision of law under which a pension could be granted on account of disease contracted while serving as a member of the militia of a State.

Since the filing of the bill additional evidence has been presented to this committee corroborative of the statements of the captain and surgeon heretofore referred to.

In view of the fact that the Missouri Enrolled Militia were, under the arrangement between the State authorities and the general government of the United States, in service, subject to the orders of the officers of the United States, it should be held that the claimant's husband was virtually in the service of the United States; and as it is shown beyond a doubt that the disease of which the soldier died was contracted in and because of said service, the committee are of opinion that the relief asked for should be granted, and therefore report favorably on the bill, and recommend that it pass.

There seems to be no doubt that the soldier, husband of the claimant, contracted the disease of which he died while serving as a member of the Missouri State Militia, and while no law provides for pensioning the soldier under such circumstances, your committee are of opinion that no reason exists in equity why the pension should not be granted. They therefore recommend that the bill pass.

The bill should be amended by striking out the word "Henry" and inserting the word "Harvey" in lieu thereof.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 864.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3717.]

*The Committee on Pensions, to whom was referred the bill (H. R. 3717) granting a pension to Alvin Walker, having considered the same, make the following report:*

That the House Committee on Invalid Pensions have at the present session made a report in this case, correctly setting forth the facts; which report is as follows:

That a similar bill was favorably reported upon during the second session of the Forty-sixth Congress. The report then made, substantially as follows, is adopted by this committee.

The papers in the case show that the petitioner was appointed additional paymaster, United States Army, September 10, 1861, and discharged May 29, 1865, and that his application for pension was filed August 29, 1876, alleging "that in June and July, 1863, he contracted typhoid fever, and from the effects of said fever and exposure his eyes became affected; that from said time his sight began to fail; that he is disabled by disease of eyes, and that without strong glasses he is unable to distinguish any but large objects, and even with the strongest glasses he is unable to do any work."

The Pension Office rejected the claim December 26, 1877, upon the ground, "the disease of eyes found by the board not shown to be a sequel or result of typhoid fever."

The petitioner was near-sighted so as to require the use of glasses before entering the service, but had never had diseased eyes, and was until the summer of 1863 a sound and healthy man. He was then aged about thirty-nine years.

Assistant Surgeon R. O. Sidney testifies to soundness before enlistment.

George Beakley, M. D., testifies (21st January, 1878)—

"That from the year 1853 to the 10th day of September, 1861, he attended and prescribed for said Alvin Walker, as his physician and medical adviser, in the city of New York, where deponent then resided; that said Alvin Walker between the above-named dates had no disease which affected his eyes, or either of them, but that his eyes were perfectly healthy and sound and free from any tendency to disease or weakness, as deponent verily believes."

Capt. J. B. Mix, on staff of General Martindale, in command District of Columbia, says that about July, 1863, claimant was sick for a considerable time with typhoid fever.

Col. J. B. Swain, of Scott's Nine Hundred, corroborates Captain Mix.

Assistant Surgeon R. O. Sidney testifies—

"That claimant contracted typhoid fever from exposure while on duty in the District of Columbia; that at that time affiant was stationed at Camp Relief as surgeon in charge, and during said time claimant consulted him as to the condition of his eyesight, and the fact that his eyesight was beginning to fail. Affiant on examination found him suffering with ophthalmia, and it was with difficulty that he could perform his duties."

Dr. George Beakley (claimant's family physician) testifies at another time, January 6, 1877, that claimant's eyes at date of discharge were diseased from the effects of typhoid fever, and that he has treated him more or less from that date to the present time.

Claimant himself swears that he was treated by a physician in private practice for the typhoid fever, whose name he does not now recollect; has heard he was dead.

The Adjutant-General's reports show that Major Walker was on duty in Washington in May, 1863, and was detached for temporary duty at New York City June 12, 1863, to return about 1st of July. July 18, 1863, he was ordered from Washington to New York on temporary duty; he reported at Washington, from temporary duty at New York, August 12, 1863. The records of the office show no evidence of disability in case of Major Walker.

The Surgeon-General's Office, in report of the case: "The records of attending surgeons of volunteer officers, Washington, D. C., show no information in this case."

The claimant was examined by the board of examining surgeons of the Pension Office at New York City, February 21, 1877, for disability from "impaired vision," who rated him one-half ($12.50), and found him affected "by ophthalmoscope, with final atrophy of both optic nerves. Both eyes are cataractons."

The Pension Office placed the case in the hands of a special agent of the office for investigation December, 1877, and the evidence returned is generally favorable to the claimant.

This committee is of the opinion that the claimant was near-sighted before his sickness, but that his eyes were not diseased until such sickness, and that they became and remain diseased in consequence of such sickness, and the same is a disability incurred by the petitioner while in the service and in the line of his duty.

The passage of the bill is therefore recommended, amended by striking out the last seven words of the bill.

Your committee believe that the claimant should have a pension, and recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 865.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 6624.]

*The Committee on Pensions, to whom was referred the bill (H. R. 6624) granting an increase of pension to Eliza F. Porter, having examined the same, submit the following report:*

That the House Committee on Invalid Pensions have, at the present session of Congress, made a report in this case covering the facts, which your committee adopt as their own:

It appears from the evidence on file with this committee that the applicant, Mrs. Eliza F. Porter, is the widow of First Lieut. James E. Porter, of the Seventh United States Cavalry, who was killed in action June 25, 1876, while engaged with the Sioux Indians on Little Big Horn River, Montana Territory (Custer massacre).

The petitioner receives now the pension of a first lieutenant's widow, her only support ($16 per month), and she has a boy nine years of age to support, and is herself a confirmed invalid, unable to do anything. She is at present living with her father and mother in Auburn, R. I., both of whom are hopeless invalids.

The battle in which Lieutenant Porter lost his life was one of the most heroic struggles that has ever cast luster on American arms. Every man was killed. Every man literally fought until he died, and died at the hands of merciless savages.

In consideration of the extraordinary circumstances attending this case, the committee recommend that the pension be increased to $30 per month, and report herewith a substitute for bill H. R. 4838, which provides for an increase of pension as above stated.

Such are the views of the House Committee, but your committee being equally divided, report the bill back to the Senate without recommendation.

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47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 866.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

MR. BLAIR, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 3733.]

The Committee on Pensions, to whom was referred the bill (H. R. 3733) granting a pension to Mary E. Taylor, have examined the same, and report favorably and recommend its passage.

The facts are stated in the House report as follows:

It appears that the claimant is the widow of James Taylor, late ordnance sergeant United States Army, and that her application for pension has been rejected by the Pension Office on the ground that the soldier's death is not chargeable to his military service. The evidence filed in her case has been either lost or mislaid by the Pension Office since April 22, 1881, on which date the chief of the division then in charge of the claim informed the Deputy Commissioner of Pensions of its condition in words as follows:

"Rejected May 27, 1880. When drowned he was not in line of duty, but was on private business, carrying provisions (in a boat) to his family. It is an equitable case—one of those it is unpleasant to reject—and a special act would not be out of the way."

From the report of the Adjutant-General it appears that James Taylor enlisted September 7, 1864, and served three years in Company C, Sixteenth United States Infantry. Re-enlisted December 1, 1868, for three years, and continued to serve as first sergeant in Company K, Eighteenth United States Infantry, until promoted ordnance sergeant, U. S. A., September 12, 1877. Was drowned November 2, 1878, at Fort Gaines, Ala.

"At the time of his death he was returning from a store on the mainland in a sailboat with provisions for his family, the said store being the nearest to Fort Gaines; lost his balance while steering, and fell overboard; his body was not recovered."

Fort Gaines was at the time of the accident in charge of said ordnance sergeant. It is situated on an island, and the food supplies were brought down on a government boat once a month. The supplies giving out, and he being in want of food, took a boat to Cedar Point with the results shown by the official record.

In the judgment of this committee the relief asked for should be granted, and therefore report favorably on the bill, with the recommendation that it do pass.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 867.

# IN THE SENATE OF THE UNITED STATES.

JULY 29, 1882.—Ordered to be printed.

Mr. GEORGE, from the Committee on Claims, submitted the following

# REPORT:

[To accompany bill S. 2169.]

*The Committee on Claims to whom was referred the claim of H. B. Wilson, administrator of W. Tinder, have considered the same, and report as follows:*

That about the year 1878, one Evans was indicted in two cases for counterfeiting. The defendant was arrested, and Tinder, the intestate, stood bail for him in each case in the sum of $5,000. A trial was had in one case, and the jury disagreed. At the next term of the circuit court of the United States for the western district of Tennesse, the accused, Evans, made default. Such proceedings were had in both cases, that judgment final was rendered against Tinder for the amount of each bail bond. Tinder died, and his administrator, Wilson, paid all the costs in both cases, and one of the judgments, the United States releasing the other. After this the administrator and some creditors of Tinder, whose estate was made insolvent by the payment above mentioned, instituted a search for Evans, and finally succeeded in procuring his arrest. Evans was convicted by his own plea on both indictments, and sentenced to the penitentiary on both, according to law, and is now serving out his sentence.

The administrator and creditors claim a return of the $5,000 paid, as above. Judge Hammond, presiding in the court, recommends a return of the money. The committee believe that the money ought to be refunded. The object of the bail bond was not to make money, but to secure the appearance of Evans and his punishment, if guilty. This has been accomplished by the efforts and the money of the bail, and all costs due the United States have been paid. We recommend the passage of the accompanying bill.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 868.

# IN THE SENATE OF THE UNITED STATES.

JULY 31, 1882.—Ordered to be printed.

Mr. JACKSON, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1911.]

*The Committee on Pensions, to whom was referred the bill (S. 1911) granting a pension to Theresa Crosby Watson, having examined the same, make the following report:*

The material facts of this case are all fully set forth in the decision of the Secretary of the Interior, bearing date May 5, 1882, affirming the action of the Commissioner of Pensions in rejecting Mrs. Watson's claim for pension. The decision of the Secretary is as follows:

DEPARTMENT OF THE INTERIOR,
*Washington, May* 5, 1882.

SIR: Your letter of the 19th ultimo has been received, submitting the papers in the rejected claim for pension, No. 3063, of Mrs. Theresa C. Watson, widow of James M. Watson, late a commodore (retired) United States Navy, together with a letter of Hon. William M. Springer, of the House of Representatives, in which he requests that the claim be referred to the Attorney-General for opinion upon the question involved therein.

Of the record of service of the officer it is sufficient to state that he was appointed as midshipman in the Navy February 1, 1823; * * * was promoted to lieutenant December 30, 1831; * * * was in command of the Fulton from February 23, 1853, to April 24, 1854; * * * was placed upon the "reserved list" on furlough pay, September 13, 1855, in pursuance of the finding of a board of officers under the Navy efficiency act, approved February 28, 1855; * * * was in command of the Fredonia from September 12, 1859, to May 12, 1862; commissioned as commander February 1, 1861, and promoted to commodore on the retired list April 4, 1867.

He was ordered to duty as light-house inspector July 1, 1862, and continued on such duty (excepting the period from September 15, 1866, to April 4, 1867, when detached waiting orders) until July 20, 1869. On the last-mentioned date he was detached to wait orders, and the report from the Navy Department does not show that he was afterwards on duty. He died at Vallejo, Cal., April 17, 1873. The widow states in her application that the cause of his death was apoplexy, the result of debility caused by long exposure while in the discharge of his duties in the Navy. In the record evidence from the Navy Department, the cause of death is given as heart disease.

Mrs. Watson does not state at what time her husband contracted the disease of which he died, but in response to a requirement of your office for evidence showing the origin of the fatal disease in the line of duty she has furnished, as the only evidence she is able to present, an affidavit of Capt. John Irwin of the Navy, who it is stated is the only officer whose testimony can be obtained who was serving with her husband "at the time to which he always referred the cause of his ill health up to the date of his death."

In this affidavit Captain Irwin details the circumstances attending the exposure to which (then lieutenant) Watson, commanding the Fulton, was subjected during a gale in April, 1854. There is no evidence, however, to connect the cause of death with this exposure, nor is there any evidence of the existence of heart disease excepting

that contained in the copy of the "certificate of death" furnished by the Navy Department, in which a medical officer certifies that, upon examination a few days before the death of Commodore Watson, he found him suffering from that disease, and that he died of the same.

The evidence cannot be accepted to prove that the fatal disease resulted from the exposure in April, 1854.

The claim was rejected by your office on account of the inability of the claimant to furnish the required proof that the disease originated in the line of duty. In a letter addressed by your office to Mr. Springer, which accompanies his appeal, he is informed that under the practical interpretation given to the general pension law by your office, the widow would not be entitled to pension if the disease of which her husband died originated after his retirement from active service. Mr. Springer invites attention to the decision of the Supreme Court in the case of the United States *vs.* Richard W. Tyler (MSS. No. 1075, October term, 1881), and, suggesting that the practice of your office above referred to conflicts with that decision, requests that the question of the right of Mrs. Watson to pension be submitted to the Attorney-General for op in.

The decision in the Tyler case relates to the right of officers of the Army, retired from active service, to receive the increase of pay provided by law for every five years of service, and the Supreme Court held that such officers are still in the service and entitled to the longevity pay. This decision does not, however, reach the point involved in the claim of Mrs. Watson. The adverse action upon her claim does not raise any question as to whether her husband continued to be in the naval service after his name was placed upon the reserved list and up to the date of his death. He undoubtedly was in the naval service during that time. "Such persons [on the reserved list] continue to be officers of the Navy, that is clear; for they not only draw pay, but they are subject to be put on active duty, and then to draw full pay." (8 Opinions Attorneys-General, p. 235.)

But, to entitle Mrs. Watson to pension under the general law, it must be proved that the disease of which her husband died originated not only "in the service," but also "in the line of duty," and if the disease was contracted subsequent to the 27th day of July, 1868, she is not entitled to pension, unless, as further required by the second section of the act of that date (now contained in section 4694 of the revision) he was "at the time borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States, or to some other vessel, or naval station, or hospital;" and the rejection of her claim is in consequence of her inability to furnish the evidence necessary to satisfy these requirements of the law.

As the case of Mrs. Watson does not involve any question of law, but one of the sufficiency of evidence, the department would not feel justified in submitting the papers to the Attorney-General for opinion, as requested by Mr. Springer.

The rejection of the claim is affirmed for the reasons above given.

It is not alleged that the disease of which Commodore Watson died originated after the date his name was placed upon the reserved list. The question whether a pension can be allowed to a widow of an officer in case his death resulted from a cause which originated after the date of his retirement is not, therefore, involved in the present case, but in view of the general statement contained in the letter to Mr. Springer informing him of the cause of rejection of Mrs. Watson's claim, to the effect that it is the practice of your office to deny the widow of an officer in the Navy a pension if the cause of his death originated after the date of his retirement, it is deemed proper to state that in the view of the department there may be cases presented to which such general rule could not be properly applied.

The act of February 28, 1855, "to promote the efficiency of the Navy" (10 Stats., p. 616), directed that the officers placed upon the reserved list created by that act should receive "the leave of absence pay, or the furlough pay, to which they may be entitled when so placed," but that they should "be subject to the orders of the Navy Department at all times for duty." That such officers were assigned to active duty is evident from the report of the service of Commodore Watson, who commanded the Fredonia and served as light-house inspector subsequent to the date of his retirement, and the act of June 1, 1860 (12 Stats., p. 27), recognized their services on active duty by directing that officers on the reserved list of the Navy when called into active service should receive the pay of their respective grades, as fixed in that act, during the term of such service. The employment of officers on the retired list of the Navy, on active duty, except in the time of war, was prohibited, after March 3, 1873, by the proviso to the first section of the naval appropriation act of that date. (17 Stats., p. 547.)

It appears, therefore, that when not engaged upon active duty an officer on the retired list of the Navy may properly be regarded in the same light, for pension purposes, as if upon leave of absence or on furlough.

If, on the other hand, an officer on the retired list of the Navy contract a disability while employed upon any duty to which he had been assigned by authority of law, and his death result therefrom, the right of his widow to pension should be

decided, so far as the question of the origin of the death cause is concerned, irrespective of the fact that he was at the time of such origin, borne upon the retired list of officers.

Very respectfully,

H. M. TELLER,
*Secretary.*

The COMMISSIONER OF PENSIONS.

Your committee are of the opinion that the case was correctly decided by the department, and that there are no special circumstances to take this case out of the operation of the general law. They accordingly recommend the indefinite postponement of the bill.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 869.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1882.—Ordered to be printed.

Mr. SEWELL, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1974.]

*The Committee on Military Affairs, to whom was referred the bill (S. 1974) fixing the pay of hospital stewards of the first class in the United States Army, have considered the same, and respectfully report:*

That upon the letter of the Secretary of War upon this subject, containing therein the opinion of the Surgeon-General (the same being made a part of this report), the committee recommend the passage of the bill, the effect of which will be to increase the pay of hospital stewards of the first class from $30 to $34 per month.

The following is the letter of the honorable Secretary of War referred to:

WAR DEPARTMENT,
*Washington City, June 21, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant, inclosing Senate bill 1974, fixing the pay of hospital stewards of the first class in the United States Army, and in reply to your request for information touching the merits of the bill, I beg to inform you that the subject, having been referred to the Surgeon-General that officer reports that this bill, if enacted, will only be an act of justice to a deserving class of non-commissioned officers by placing them upon the same footing, as regards pay, with others holding under existing law the rank of ordnance sergeant.

The views of the Surgeon-General are concurred in by this department.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. WM. J. SEWELL,
*of Committee on Military Affairs, United States Senate.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 870.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1882.—Ordered to be printed.

Mr. HAWLEY, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 374.]

The Committee on Military Affairs, to whom was referred the bill (S. 374) to remove the charge of desertion from the military record of William Hull, having duly considered the same, adopt and beg leave to submit the following report, which was made to the Senate in the Forty-sixth Congress by the late Senator Burnside:

William Hull entered the service on the 13th of July, 1863, in Company C, Eighteenth Massachusetts Volunteers. He was captured by the enemy the following October and remained in prison thirteen months. He arrived at Camp Parole, Md., in December, 1864, in bad health and reduced condition, in consequence of which he was granted thirty days' leave of absence on the 13th of December. He went to his home in Fall River, where he remained; nor did he rejoin his regiment or report again to the hospital, for the reason that he was not able to travel, his health being so much shattered and broken that he felt that there was no prospect of his recovery, and that therefore there was no necessity for observing the strict military etiquette of reporting by letter or surgeon's certificate. He was, in consequence, marked upon the rolls of his company as a deserter, which your committee are of opinion he was not. He may have been a deserter in a technical sense, but not a deserter in fact.

The committee, therefore, report the bill favorably and recommend its passage.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 871.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1882.—Ordered to be printed.

Mr. HAWLEY, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 191.]

*The Committee on Military Affairs, to whom was referred the bill* (S. 191) *for the relief of Frances H. Plummer, having had the same under consideration, report as follows:*

That the late Brig. Gen. Joseph B. Plummer, a graduate of the United States Military Academy, served honorably in the Florida and Mexican wars. At the breaking out of the rebellion he was a captain in command of two companies of the First United States Infantry, stationed at Fort Cobb in the Indian Territory. In Texas General Twiggs joined the Confederacy and surrendered his forces. A considerable force of rebels marching northward from Texas occupied Fort Washita the day Lieutenant-Colonel Emory evacuated it, and on the 5th of May, 1861, a large body of Texans occupied Arbuckle. The retreating Union forces were directed to concentrate at Fort Leavenworth, Kansas. Captain Plummer evacuated Fort Cobb May 5, and marching rapidly joined Lieutenant-Colonel Emory May 9, and proceeded to Kansas. He commanded the First United States Infantry at Wilson's Creek and was severely wounded. He became colonel of the Eleventh Missouri Volunteers, and for gallantry at Fredericktown, October, 1861, he was promoted to be a brigadier-general. He served with distinction in many battles, and died of his wound at Corinth, Miss., August 9, 1862, leaving a dependent widow.

Of the three officers with him when he evacuated Fort Cobb, two joined the Confederacy. He had two companies of infantry and but seven wagons for transportation of necessary supplies and seven camp women and their children. His own property he left behind, save what he placed in five large chests and intrusted to the care of Tucker Barton, the sutler, who was supposed to have engaged to take them to Fort Smith and ship them to Saint Louis. Barton, who, like his brother Captain Barton of the same command, joined the Confederacy, says he was to take them to New Orleans and ship them to New York City. The following is an extract from his affidavit:

> At the time of said evacuation the United States did not have sufficient transportation for the baggage and effects of the officers stationed at said post, for which reason Capt. J. B. Plummer, First Infantry, United States Army, intrusted to him, to be taken to New Orleans, and thence shipped to New York, if possible, several (he thinks seven) large chests, which he represented contained articles of great value, the collection of a lifetime; that a few days after leaving Fort Cobb his train was approached and

surrounded by a large body of armed men from Texas, several hundred in number; that he was made prisoner by them on the ground that he was giving aid and comfort to the United States, the parties claiming to hold commissions from the State of Texas; that the chests, being marked in the name of the said Capt. J. B. Plummer, United States Army, were declared forfeited, and were forcibly taken from his possession by said body of armed men. This was done partly in the Indian Territory and partly in the State of Texas, in the month of May, 1861.

A favorable report upon this case in the House during the Forty-fifth Congress says:

Your committee recognize the fact that when war is actually going on there are many kinds of property that the government is not liable to pay officers for in case of loss by capture or otherwise; for the reason that at such a time officers must necessarily take the risk and hazard of the service themselves. The government has, however, provided by law for the payment to officers for horses killed or lost in battle, or by the dangers of the sea while being transported (Revised Statutes, sec. 3482); and also for losses by officers, non-commissioned officers, or privates in the military service, while in the line of duty, of horses and certain other property, by capture or necessary abandonment, &c. (Revised Statutes, sections 3483, 3484, and 3485.) No provision of law, however, gives the right to any department, officer, or court to pay this claim.

In analogy to the foregoing legal provisions a part of your committee thinks this claim should be paid. A portion of the committee finds the claim should be paid, for the further reason that governments have usually undertaken to reimburse its citizens for property lost which was at the outbreak of a war in an enemy's country and seized and confiscated.

At the time war was declared with Mexico an American citizen was in the port of Vera Cruz with his ship, which was seized and confiscated. The United States Government paid for this vessel and its cargo. If a government should pay to its private citizens such losses, much more favorably should it regard the claims for losses of its own officers who are so unfortunate as to be serving, when war breaks out, under orders in a territory which becomes, without fault of theirs, insurrectionary or enemy's territory.

The committee all think the claim made by Mrs. Plummer for the loss of Captain Plummer's goods ought to be paid as a matter of right and public policy. Its payment is no precedent for payments for captured or abandoned property in an enemy's country. Captain Plummer lost a large amount of personal property, making his military duties his first consideration, but he saved his troops and led them to battle with great vigor and courage.

A sworn schedule of the goods lost gives as their value the sum of $2,120, but some of them were articles of luxury not usual nor necessary in a frontier camp, and the committee recommend that the words "five hundred" be stricken out of the third line of the bill, leaving one thousand dollars as the sum to be paid Mrs. Plummer, and that as so amended the bill be passed.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 872.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 1, 1882.—Ordered to be printed.

Mr. PLATT, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill H. R. 5018.]

*The Committee on Pensions, to whom was referred the bill (H. R. 5018) granting a pension to Elizabeth F. Rice, having had the same under consideration, respectfully report:*

Claimant is the widow of Perry A. Price, who was an attorney, residing at Mercersburg, Pa. On the 10th of October, 1862, General J. E. B. Stuart made a raid on Mercersburg, captured Rice and several other citizens, whom he took South and confined in Libby prison, holding them as hostages for the safety of certain Confederates held by United States authorities. After a confinement of about five months, Rice died in prison, presumably as the result of the hardships and exposures of prison life. The claimant was left with three children, the oldest at that time nine years of age, and without property. She has never received any compensation from the government.

This case is exceptional. While the committee hold, as a rule, that all pensions should rest upon military service, the fact that Rice was seized and held by the enemy as a hostage, and while so held lost his life, seems to justify a departure from the rule. The committee therefore recommend the passage of the bill.

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47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 873.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 2, 1882.—Ordered to be printed.

Mr. ROLLINS, from the Committee on Naval Affairs, submitted the following

# REPORT:

[To accompany bill S. 2103.]

The Committee on Naval Affairs, to whom was referred the bill (S. 2103) authorizing the President of the United States to appoint William F. Pratt, late a second assistant engineer in the United States Navy, upon the retired list of the Navy, having had the same under consideration, begs leave to report that said bill ought not to pass, for the reasons stated in the following communication from the Navy Department. The committee therefore recommends that the bill be postponed indefinitely.

NAVY DEPARTMENT,
*Washington, July 21, 1882.*

SIR: I have the honor to acknowledge the receipt of a letter, dated the 14th instant, from the Committee on Naval Affairs, inclosing Senate bill 2103, "authorizing the President of the United States to appoint William F. Pratt, late a second assistant engineer in the United States Navy, upon the retired list of the Navy," and requesting me to communicate to you the opinion of this department as to the propriety of the passage of the bill.

In compliance with the request of the committee, I have to state that Mr. Pratt voluntarily resigned his position as a second assistant engineer in the Navy July 29, 1865; and that a revocation of the order accepting his resignation, as proposed by the bill, would result in his restoration to the service with pay as a second assistant engineer on the active list from July 29, 1865, to January 1, 1866, and with the retired pay of that grade from the latter date to the present time.

The department is of the opinion that it is not advisable to enlarge the retired list of the Navy by additions to it of persons from civil life because of former service in the Navy. The object of the law regulating the retirement of officers of the Navy is to promote the efficiency of the service by placing upon the retired list such officers as may be unfit for active duty by reason of age or incapacity, resulting from long and faithful service, from wounds or injuries received in the line of duty, or from sickness or exposure in service.

For the reasons above stated I do not recommend the passage of the bill.

Very respectfully,

W. E. CHANDLER,
*Secretary of the Navy.*

Hon. E. H. ROLLINS,
*Committee on Naval Affairs, United States Senate.*

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 874.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 2, 1882.—Ordered to be printed.

Mr. HARRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 1871.]

*The Committee on Military Affairs, to which was referred the bill (S. 1871) to regulate the method of purchasing tobacco for the use of the Army, respectfully report:*

That in answer to a communication addressed to the Secretary of War upon the subject the following letter, inclosing one from the Commissary-General of Subsistence, has been received:

WAR DEPARTMENT,
*Washington City, June 26, 1882.*

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, referring to Senate bill 1871, to regulate the method of purchasing tobacco for the use of the Army, and in response to your request for information touching the merits of the bill, to invite your attention to the inclosed report on the subject from the Commissary-General of Subsistence, dated the 23d instant, in whose views therein expressed, I concur.

Very respectfully, your obedient servant,

ROBERT T. LINCOLN,
*Secretary of War.*

Hon. BENJ. HARRISON,
*Of Committee on Military Affairs, United States Senate.*

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WAR DEPARTMENT,
OFFICE COMMISSARY-GENERAL OF SUBSISTENCE,
*Washington, D. C., June 23, 1882.*

SIR: I have the honor to return herewith letter of Hon. Benj. Harrison of June 20, 1882, inclosing Senate bill No. 1871, to regulate the method of purchasing tobacco for the use of the Army, and inviting opinion as to the propositions contained in the bill, and other suggestions upon the subject, and would respectfully submit the following report:

A bill similar in general character to the present one was introduced in the House on February 9, 1880 (bill H. R. 4395, Forty-sixth Congress, second session), and referred to the Committee on Military Affairs. That bill, like the present one, prescribed rules for making purchases of tobacco—the noticeable feature being that the first-mentioned bill required "two experts" to be selected to examine all samples of tobacco submitted under advertisements inviting proposals, and enacted that "such tobacco as may be selected by said experts as best for the use of the Army shall be purchased by the Secretary of War," while the present bill provides that the samples "shall be carefully examined by *an* expert in tobacco, and such tobacco as may be selected by said expert as best for the use of the Army shall be purchased by the Secretary of War."

The latter bill therefore proposes the institution of a *single expert*, who shall control the Secretary of War in respect to the samples of tobacco to be purchased, instead of

the *two* of the former bill. The selection of the tobacco from the samples offered is to be under the unrestricted control of this one man, who in this matter is made the superior of a cabinet officer, the bill being mandatory upon the Secretary of War to purchase the article selected by the expert.

The Military Committee of the House, in reporting on the former bill on March 31, 1880 (House Report No. 679, Forty-sixth Congress, second session), amended the same by striking out all that portion relating to the experts and their functions, and the rules as to times of advertising, and prescribed that proposals should be annually invited in certain principalities, to be opened at the Commissary-General's Office and acted upon by designated officers of the Subsistence Department under the supervision of the Commissary-General, and directed all contracts for tobacco for the Army should be made in the city of Washington.

That such legislation is needless must be apparent. In my annual report for 1880, referring to the proposed legislation in regard to purchasing tobacco, I said:

"I am of opinion that tobacco can be as well and economically purchased by inviting proposals to be opened in New York, Chicago, and Saint Louis, as by receiving proposals only in Washington."

I am still of that opinion, and have acted upon it in the more recent purchases of tobacco. The commissaries of subsistence who are charged with the duty of purchasing tobacco for the Army are amply competent for that duty. Whether or not an expert should select the sample which should bind the Secretary of War, the chance for fraud still remains with the manufacturer after the contract is awarded. I respectfully invite attention to pages 14 and 15 of the Annual Report of the Commissary-General of Subsistence, for the year 1880 (copy herewith), which fully explained my views at that time.

Tobacco is at present procured by the Subsistence Department under contracts made at different points where there are large manufacturers and dealers in the article, and competition is invited and obtained from other points than those in which the bids are opened. The contracts are made by different officers of the Subsistence Department, who can be and are held to a strict responsibility. This responsibility extends, not simply to the article, but to the perfect fairness of the awarding and making of the contracts and to the quality of the article actually delivered and received.

I here reiterate the opinion, expressed by me when the previous bill was before the Committee on Military Affairs, that no special legislation on the subject is necessary.

I inclose herewith, for the information of the Military Committee, House of Representatives, copy of advertisement and conditions under which tobacco for the Army was recently purchased in Chicago.

Respectfully, your obedient servant,

R. MACFEELY,
*Commissary-General of Subsistence.*

HON. SECRETARY OF WAR.

Your committee do not think it would be wise to require all purchases of tobacco to be made at Washington, nor do they believe that it would be wise to place in the power of any expert the final decision as to what tobacco should be accepted by the department. No evidence has been furnished to the committee that any abuses exist under the present system.

In view of these facts, the committee recommend that the bill do not pass, and that it be indefinitely postponed.

C

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 875.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 2, 1882.—Ordered to be printed.

Mr. HARRISON, from the Committee on Military Affairs, submitted the following

# REPORT:

[To accompany bill S. 2119.]

*The Committee on Military Affairs, to whom was referred the bill (S. 2119) for the relief of Martin L. Bundy, respectfully report:*

That a bill extending the same relief was before the House of Representatives at the second session of the Forty-sixth Congress, and was reported by Mr. Browne, from the Committee on Military Affairs, favorably. The facts in the case, as your committee believe, are fairly stated in that report, which was as follows:

Major Bundy was appointed additional paymaster, United States Army, on the 31st day of August, 1861, and served as such until the 15th day of April, 1866, when he was honorably discharged and mustered out of the service. During the term of Major Bundy's service he disbursed millions of money, and after his discharge he settled his accounts with the Treasury Department, and on the 22d day of May, 1872, received from the office of the Second Auditor a certificate of non-indebtedness in these words:

"TREASURY DEPARTMENT,
"SECOND AUDITOR'S OFFICE,
"*May* 22, 1872.

"This is to certify the accounts of Maj. M. L. Bundy, late additional paymaster, United States Army, having been finally adjusted in this office and confirmed by the Second Comptroller, show no indebtedness on his part to the United States.

"E. B. FRENCH, *Auditor.*"

About seven years after this, say some time in 1879, upon a readjustment of his accounts by the Second Auditor, it was found that he had received a duplicate credit for the sum of $528.72, and that sum was due from him to the United States.

By the act of July 17, 1862, officers of Major Bundy's rank were entitled to forage for two horses. From that date until the time of his muster out of the service, a period of forty-four months and twenty-nine days, the value of this forage, according to the regulations, is $719.47. This forage was never drawn, nor was it ever commuted or paid.

Under the circumstances of this case your committee think it is but just that in adjusting Major Bundy's account he should be credited with the value of the forage which was due him under the law and which he did not receive.

Your committee recommend the following amendment:

After the word "horses" insert the words *to which he was entitled and which was.*

And when so amended the committee recommend the passage of the bill.

Your committee, therefore, recommend the passage of the bill.

O

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 876.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 4, 1882.—Ordered to be printed.

Mr. VAN WYCK, from the Committee on Pensions, submitted the following

# REPORT:

[To accompany bill S. 1304.]

*The Committee on Pensions, to whom was referred the bill (S. 1304) granting a pension to John V. Bovell, having examined the same, report as follows:*

That John V. Bovell enlisted in the Sixty-sixth Illinois Volunteers September 10, 1861; discharged August 13, 1863, as Second Lieutenant. His subsequent service was as captain Company C, One hundred and thirty-fifth Illinois Volunteers, from June 6, 1864, to Septemb er28, 1864, and as captain Company C, One hundred and fiftieth Illinois Volunteers, from February 14, 1865, to January 16, 1866.

In December, 1861, he was injured in the line of duty in a railroad collision on the North Missouri Railroad.

In line of duty at battle of Shiloh he received a shock to his nervous system, connected with imprisonment at Libby Prison for six months, developed symptoms of mental aberration, and finally resulted in his insanity.

This claim was rejected at department because the insanity did not result fromthe injuries alleged. Your committee, however, believe that the injuries were sufficient, and the medical evidence shows that the injuries might produce insanity.

Your committee report herewith a bill granting a pension to John V. Bovell, in the nature of a substitute for bill S. 1304.

O

47TH CONGRESS, 1st Session. | SENATE. | REPORT No. 877.

# IN THE SENATE OF THE UNITED STATES.

AUGUST 7, 1882.—Ordered to be printed.

Mr. SHERMAN, from the Committee on Finance, submitted the following

# REPORT:

[To accompany bill S. 1023.]

*The Committee on Finance, to whom was referred the bill (S. 1023) for the relief of the sureties of George F. Elliott, have considered the same, and respectfully report:*

That in October, 1871, a judgment was obtained in the United States circuit court for the southern district of Ohio against George F. Elliott, principal, and William A. Elliott and Louis Sohngm, sureties, on a distiller's bond for the sum of $15,831.66. Of this amount $9,831.66 were on account of taxes due the government, the remaining $6,000 being on account of a meter which was never in use in the distillery. George F. Elliott, the principal, was insolvent when the judgment was obtained, and is so now. Louis Sohngm was not in condition to assist in the payment of said judgment. The result was that William A. Elliott paid in full the amount of $9,831.66 due for taxes to the government, the Treasury Department in May, 1882, having suspended the collection of the remaining $6,000 pending an application to Congress for relief.

William A. Elliott is now dead, and the committee is advised that the payment of the $6,000 balance on said judgment, with interest, will impoverish his widow. It is therefore thought in view of all the facts that a credit should be given on said judgment for the sum of $6,000, of date of November 1, 1871, with the exception of such expenses as may have been incurred by the government in enforcing said claim. The committee therefore report the bill with an amendment.

47TH CONGRESS, 1st Session. } SENATE. { REPORT No. 878.

IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1882.—Ordered to be printed.

Mr. WINDOM, from the select committee on the subject, submitted the following

# REPORT:

*The select committee appointed to inquire whether any money has been raised to promote or defeat the bill (H. R. 5656) to amend certain laws on the subject of distilled spirits in bonded warehouses respectfully report:*

That they have examined under oath several persons who were in the city of Washington urging the passage of said bill, and also several of the principal distillers and dealers in whisky, officers of national organizations, and other persons who were believed to be best informed upon the subject under investigation. The committee obtained much valuable information as to the condition of the whisky trade and the methods employed to obtain relief from overproduction, but they did not find that any money had been corruptly employed to promote the passage of said bill. The evidence disclosed certain facts existing at the time the investigation was ordered which, unexplained, furnished sufficient ground for the belief that large amounts of money were being raised for the purpose of promoting legislation in the interest of the whisky trade, and which, unexplained, doubtless furnished the reasons for believing that it was intended to influence the action of Congress upon said bill by improper means. Some of these facts and the explanations which were given may be briefly stated.

In October, 1881, a meeting of the National Distillers and Spirit Dealers' Association was held at Chicago, at which an address of Mr. Henry M. Shufeldt, president of the association, was read, in which the purposes and objects of the organization were stated as follows:

> While our membership has increased somewhat since the date of our last meeting, it is still very far from what it should be to render our organization effective in thoroughly guarding and advancing the interests of the trade whenever they are assailed or threatened. The records of the government show that of registered distillers and licensed wholesale dealers there are about 10,000. Certainly one-half of this number should, and I believe with the proper effort could, be brought within our organization. A membership of 5,000 would give us, in the way of annual dues, at $10 each, $50,000, to say nothing of the extra assessments exacted of and cheerfully paid by the distillers. With $50,000 annually at our command, I feel confident that the association would find little difficulty in staying the wave of fanaticism and intolerance which, if not checked, threatens to sweep over a great portion of our fair land. There would no longer rise a necessity for the calls that are made with singular regularity upon individual members of our trade during each recurring session of our State legislatures. The fund thus equally and equitably derived from the many, while it would impose a burden upon none, would prove a great relief to those few who have annually sustained this tax. There would also be some guarantee that the funds thus raised would be both honestly and effectively applied. *I believe it to be the mission of our association to guard our business from oppressive and destructive State legislation, no less than it is its mission to promote the enactment of friendly national laws*, and defeat, so far as possi-

ble, the passage of those inimical to our interests and our prosperity. I would, indeed, recommend the appointment of a special committee at this meeting to take charge of this work, and this committee should be composed of the most intelligent and trustworthy members of our association.

* * * * * * *

It seemed to be not an unfair inference from this express declaration that the "mission" of the association was, among other things, "to promote the enactment of friendly national laws," in connection with the appeal for more money; that it was their desire and intention to influence legislation by the use of this money in some way. That the convention was in full sympathy with the purposes and recommendations of its president appears by the following extract from its subsequent proceedings:

Mr. PRATT, of Chicago. In *pursuance of the recommendation made by the president*, I would like to offer this resolution:

"*Resolved*, That, appreciating the importance of enlarging the membership of this association, and thereby enlarging its usefulness, we fully indorse the recommendation of our worthy president, and hereby resolve ourselves into a committee of the whole on membership, and pledge our individual efforts, one and all, to bringing members of the trade within our organization."

Soon after these declarations of a purpose to raise money to "promote the enactment of friendly national laws," representatives of the whisky interest appeared in Washington to urge the passage of House bill 5656, which contained provisions deemed by some in the direction of "friendly legislation." The next month (November) very heavy assessments began to be made upon many of the large distilleries, which were continued until the month of April last, when they had reached an aggregate of over $700,000, some houses being assessed as high as $15,000. This large sum was proven to have been used entirely to promote the exportation of spirits, and thereby prevent a ruinous fall of prices in the home market, and the committee were convinced that the proceeds of said assessments were not used to influence legislation.

The committee have no doubt, however, that these large assessments, coming so soon after the declaration of the Chicago convention, of its purpose to raise money to promote friendly legislation, and while said bill was pending in Congress, created an impression upon the minds of many persons (who were not advised as to the use which was to be made of the money) that there was some connection between the assessments and the proposed legislation.

On the 6th of last April, and while said bill was pending in Congress, a meeting of liquor-dealers and distillers was held in Louisville, Ky., for the purpose of raising money to influence legislation in their interest, as appears by the following extract from the proceedings given in the testimony of Mr. J. M. Atherton:

At a meeting of the wholesale liquor-dealers and distillers, held at the Galt House April 6, 1882, for the purpose of organizing an association *to make an effort to have the tax reduced on whisky to* 50c. *per gallon*, it was

*Resolved*, That a committee of six be appointed, consisting of Charles P. Moorman, *chairman;* H. A. Theirman, F. W. Bonnie, B. D. Mattingly, Aug. Coldenay, Wm. T. Ross, to solicit subscriptions from the whisky interests of this city, payable to the order of H. H. Shufeldt, *and that Louisville should contribute* $5,000.

J. M. ATHERTON, *Chairman.*
WM. T. ROSS, *Secretary.*

We, the undersigned, agree to contribute the amount opposite our names for the purposes named:

| | |
|---|---|
| The J. M. Atherton Co. (paid) | $250 00 |
| C. P. Moorman & Co. (paid) | 500 00 |
| Bonnie Bros. (paid) | 250 00 |
| E. H. Chase & Co. (paid) | 250 00 |

| | |
|---|---|
| Cochran Fulton Co. (paid) | $250 00 |
| Jesse Moore & Co. (paid) | 250 00 |
| Alvin Wood & Co. (paid) | 100 00 |
| Hofheimer & Selliger (paid) | 250 00 |
| Frankel & Block (paid) | 100 00 |
| Lee, Bloom & Co. (paid) | 50 00 |
| Stoge & Reiling (paid) | 100 00 |
| Brown, Thompson & Co. (paid) | 50 00 |
| M. Schurtz (paid) | 50 00 |
| Jno. B. McIlrain & Son (paid) | 50 00 |
| Taylor & Williams (paid) | 50 00 |
| Mellwood Distilling Co., by G. W. Sweargin, president (paid) | 250 00 |
| J. G. Mattingly & Sons (paid) | 250 00 |
| J. W. Lyon & Co. (paid) | 50 00 |
| Kentucky Distilling Co., by Julius Barkhouse, pres't (paid) | 100 00 |
| Gilmore, Ross & Co. (paid) | 25 00 |
| Harris & Callaghan (paid) | 50 00 |
| John Callaghan & Co. (paid) | 50 00 |
| Davis & Haden (paid) | 100 00 |
| Walker & Co. (paid) | 25 00 |
| Bartley Johnson & Co. (paid) | 100 00 |
| Applegate & Sons (paid) | 100 00 |
| Aug. Coldenay (paid) | 50 00 |
| Robt. G. McCorkle (paid) | 50 00 |
| W. L. Weller (paid) | 25 00 |
| H. A. Thierman & Co. (paid) | 250 00 |
| Wm. Robin & Co. (paid) | 25 00 |
| Henry Wolff (paid) | 50 00 |
| Dan. E. Doherty & Co. (paid) | 50 00 |
| Lapp, Goldsmith & Co. (paid) | 50 00 |
| J. Seekamp & Bro. (paid) | 50 00 |
| J. Simon & Co. (paid) | 50 00 |
| | 4,300 00 |

We certify the foregoing to be a true copy from the original in our possession.

C. P. MOORMAN & CO.

LOUISVILLE, KY., *May* 29, 1882.

The declaration that "Louisville should raise $5,000" for the purpose named in said resolution seemed to warrant the inference that a very large sum was contemplated from the dealers and distillers of the entire country, but the evidence taken by the committee showed that other localities did not respond so liberally as that city had done. Mr. Shufeldt, president of the National Distillers and Spirit Dealers' Association, to whom the $4,300 raised at Louisville was remitted, swore that he also collected $1,000 in Lexington, Ky., $1,500 in Cincinnati, Ohio, and $1,000 in Pennsylvania. As to the $4,300 raised at Louisville, to aid in securing a reduction of the tax on whisky to 50 cents per gallon, he testified that he still had it in his possession, and that the $3,500 raised elsewhere—

Was put into my hands for any purpose I saw fit, prohibition, or anything in that line. We have had a great deal of trouble in the Nortwesthern States during the last year or two, and this money was raised for anything I saw fit, and I have used it mainly in prohibition.

Q. You say you have used it on prohibition; how?

Mr. SHUFELDT. I have done it by passing it through prohibition people who were coming after subscriptions for prohibition.

Q. Do you mean, to help pass prohibitory laws?

Mr. SHUFELDT. No; anti-prohibitory laws, that's what we are after. We have got to do this fighting all the time.

It was also proven that the Kentucky Distillers Association had agreed to pay Col. G. C. Wharton, an attorney of Louisville, Ky., $5,000 for his services in connection with the passage of the bonded extension bill, and that $1,000 had been paid him on account. The evidence

showed that Colonel Wharton prepared the bill and made arguments before the committee of the House of Representatives, but did not show that anything was done by him inconsistent with the character of an honorable attorney.

Other small contributions were proven, amounting to several hundred dollars, to pay the expenses of persons who visited Washington to promote the passage of the bill, making a total of over $13,000, which the committee found had been raised "to promote friendly national legislation in various ways"; but, as already stated, it was not proven that any part of this money was corruptly employed for that purpose.

In the process of the investigation, imputations were cast upon certain very reputable journalists by Mr. A. C. Buell, which, your committee take pleasure in saying, were wholly unsustained by the evidence.

The evidence taken by your committee is herewith submitted:

# TESTIMONY

IN REGARD TO

# DISTILLED SPIRITS IN SPECIAL BONDED WAREHOUSES.

BEFORE A SELECT COMMITTEE OF THE SENATE TO INQUIRE WHETHER ANY MONEY HAS BEEN RAISED TO PROMOTE OR DEFEAT BILL H. R. 5656 TO AMEND CERTAIN LAWS ON THE SUBJECT OF DISTILLED SPIRITS IN SPECIAL BONDED WAREHOUSES, CONSISTING OF SENATORS WINDOM (CHAIRMAN), HAWLEY, HARRISON, COCKRELL, AND PUGH.

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WASHINGTON, D. C., *Monday, May* 29, 1882.

WILLIAM H. THOMAS sworn and examined.

By the CHAIRMAN:

Question. Please state your name and residence.—Answer. William H. Thomas, Louisville, Ky.

Q. What is your business?—A. I am a wholesale liquor dealer, buy whiskies from distillers and sell them, and I have a small distillery where I make whisky.

Q. Where is your distillery?—A. My distillery is in Jefferson County, about seven miles from Louisville.

Q. What sort of whisky do you make?—A. I make old-fashioned, hand-made, sour mash whisky.

Q. Please state to the committee, so that we may understand it at the outset, the distinction between the two products. There are, as I understand it, two different kinds of whisky.—A. Yes, sir. The whiskies made in Kentucky, Pennsylvania, and Maryland are made for aging purposes, and when they are supposed to be six, seven, or eight years old they are then ready for use. They are stored in bonded warehouses, and cure while stored, and as long as they are kept they improve.

Q. Up to what time does that improvement go on?—A. I believe it will improve as long as it evaporates; as long as the water will leave it it will continue to improve.

Q. Is the improvement caused by the evaporation of water or other elements in the whisky?—A. I am not a chemist, but I think whisky ten years old is better than it is when it is eight, and better eight years old than six.

Q. Now, what is the other kind of whisky?—A. Those whiskies are made in distilleries west and north of the Ohio, in Missouri, Kansas, Iowa, Wisconsin, Illinois, Indiana, and Ohio, and are as valuable the day they are made as they are ever afterwards.

Q. Please explain to the committee, if you know, how that difference of value is produced—why one has as much value when produced as it ever has, and the other takes eight or ten years to perfect.—A. Well,

sir, there are two grades of whisky made for immediate use, alcohol and cologne spirits. In all probability three-quarters of the tax that is collected from whisky is collected from that character of whisky. Alcohol enters into compounds and into manufacturing purposes. Then they make a cologne spirit which is free from taste or smell and has no flavor. That is used for blending with the whiskies that we make in Kentucky, Maryland, and in Pennsylvania. There is a business which they call compounding whiskies. They will buy, say, 100 barrels of these straight whiskies that are put into bonded warehouses for aging, and then they will buy 100 barrels of this cologne spirit that has no flavor——

By Mr. PUGH:

Q. Is that pure alcohol?—A. Pure alcohol—yes, sir; proof alcohol, proof spirit. They will take that and blend it with those whiskies that are made for aging, and they will make two barrels out of one. That is a compounded whisky, or blended whisky.

By the CHAIRMAN:

Q. But take the original manufacture of the cologne spirits—the high-wines, as I believe they are called—and the bourbon, or whatever the proper name is for the other kind of liquors, and what is the difference in the manufacture; why is one kind worth so much more than the other?—A. One is made out of selected grain, and made with great care; it is made from the very best grain, while you can make just as much alcohol out of rejected grain as you can out of the best sort. You can buy grain suitable for alcohol sometimes on the Chicago and Cincinnati markets for 5 or 10 cents a bushel less than a good quality. You can make alcohol out of potatoes; you can make it out of oats; you can make it out of anything that has saccharine matter in it.

Q. Then the high-wine product is out of an inferior material?—A. Yes, sir; sometimes.

Q. The manufacture is substantially the same?—A. Yes—the manufacture is not the same, because we make whisky by hand in Kentucky. In mashing 100 bushels of grain in a day you will use 100 little tubs to make the mash in. It is a slow operation; and then the yield per bushel of grain is not as much—you don't get as many gallons out of a bushel of grain as you will in a high-wine distillery. It will cost a high-wine distiller to make high-wine to-day about 22 cents. It costs a man who makes the kind of whisky that we make in Pennsylvania, Maryland, and in Kentucky, from 30 to 45 cents.

Q. What is the relative market value of those two kinds of whiskies at the time they are produced?—A. That depends entirely upon the price of grain.

Q. About what is it now, if you know?—A. I do not keep up with the market. I think in all probability that high-wines to-day are worth $1.12.

Q. Does the purchaser pay the tax?—A. Yes; about 22 cents, and 90 cents makes $1.12. Bourbon or rye whisky is worth from 50 cents to 70 cents in bond.

Q. Does it sell for that in the market now?—A. Yes, sir.

Q. What is the bourbon or rye worth?—A. From 50 cents to 70 cents, when new.

Q. What is the value of that same whisky when it is six or eight years old?—A. When there is a scarcity in the market, it is very high. I apprehend that that class of whisky is going to be very cheap from the fact that there is a very large over-production. When there is an over-production prices go down, but when there is a scarcity in the market, prices go up.

Q. What is it worth now, six or eight years old?—A. I have got whisky in my house, made in January, 1879 (that is three years and four months old now), that I would be very glad to sell for $2.25, tax paid. Then I have other brands of whisky there (we sell more upon the brand that is upon the barrel than upon the character of the whisky in it), that is worth $3.50, three and a half years old; it will be four years old next September.

Q. That is tax paid?—A. That is tax paid; yes, sir

Q. Now, how much more valuable will that be in three or four years more?—A. I have my doubts as to whether the prices will be improved from this time on enough to cover the shrinkage and the interest upon the investment, for the simple reason that too much whisky was produced in 1881, and too much whisky of that kind was produced in 1882. There is enough of it produced now in those two seasons to run the trade which will require that kind of whisky for six years.

Q. What is the average demand for that kind of whisky per annum?—A. About 20,000,000 gallons is the most that has ever been sold.

Q. That is the maximum; what is about the average?—A. I would say 15,000,000 gallons a year of that character of whisky for the last ten years.

Q. Then there is now in bond how much?—A. About 80,000,000, or there will be about that much on the first of July. There were contracts made a year and a half ago for this whisky, and a great many parties got out of them. I made contracts for some myself, and I paid the parties quite a large sum of money to release me from the contracts, seeing that there was going to be too much produced.

Q. Who are the customers for this high-class whisky—I mean what class of customers?—A. The dealers; all dealers in whisky. Saint Paul and Minneapolis have a great deal of it.

Q. Do they use that kind of whisky for compounding now?—A. They use it for blending, yes, sir; they call it blending.

Q. Are high-wine distillers (I will use that term to distinguish from the others) desirous of the passage of this bill that is pending now?—A. I do not think the high-wine men have any special interest in it. Their interest is in the reduction of the tax. Their mode of doing business is to make the whisky and get the money for it as quickly as possible. Our interest is to make it, keep it, and postpone the sale of it upon the idea that as it gets older we can make more money upon it. We always do that whenever there is not too much made. But the whole whisky interest of the country went wild upon whisky two years ago, and I will give you the reason for it: After 1873, when the panic commenced, the production of whisky was reduced every year, and in 1879, when good times revived, there was but a small stock of this class of whisky in the country. The whole labor of the country was put to work, and they are the people who consume the whisky. There was not enough, and the price went way up, and the men who had any made immense profit on it. A man would buy it to-day and sell it to-morrow until we all just went wild and made contracts with the distillers in Pennsylvania, Maryland, and Kentucky for whisky to be made a year or two ahead, and this resulted in too much whisky.

Q. What was the price of this higher grade whisky in 1873 and 1874, after the panic?—A. Well, the price even in our State varied, for the reason that the distillers' brands have a great deal to do with it. You will find whisky made by some obscure man in the country

which is quite as good as that made by the most well-known distillers, but it brings a great deal less.

Q. Do you remember about the average price or range of prices?—A. Well, sir, it sold in bond for about 25 cents to 60 cents during the dull times, according to the reputation of the distillers who made it.

Q. There was quite a large supply on hand at that time, I believe?—A. No; you will see by the Commissioner's report to Congress—he tabulates it every year—that from 1873 down to 1879 less of this character of whisky was produced each year. In 1879 they made a little more than in 1878, and in 1880 they made 60 per cent. more than they did in 1879, and in 1881 they made double as much as they made in 1880, and in 1882 nearly as much as they made in 1881. I firmly believe that if no whisky is made in the next three years the supply on hand in bonded warehouses will meet all of the demands of the trade.

Q. Is there any reduction in the amount made now, or is it going on as largely as ever?—A. They are stopping everywhere. Now, Mr. Atherton, one of the gentlemen who is summoned before your committee, telegraphed to Senator Beck that his New York partner had arrived at home, and that they were winding up their year's business—stopping their large distilleries. Now, this is in the month of May, and it would be impossible for him to come here before Thursday or Friday. He ran all his distilleries last year, and they are the next largest in the State. They ran away into the middle of July last season. He now stops two months earlier than he did last year.

Q. I notice the amount placed in bond during the last three months seems to be larger than at almost any other time?—A. Yes, sir; for the reason that that is the season when they make the most. In March, April, and May I believe they generally produce more than in any other months.

Q. What are the organizations representing the distilling of whisky interests that you know; there is a national organization?—A. Yes, sir; there is but one that affects the character of the whisky that I deal in.

Q. What is that called?—A. The National Distillers' and Liquor Dealers' Association.

Q. Who is the president of that?—A. Mr. H. H. Shufeldt, of Chicago. Dr. Rush is the secretary, and Mr. Stevens, of Cincinnati, is the treasurer. I am one of the executive committee.

Q. Does that embrace the high-wine distillers, too?—A. Yes, sir.

Q. Both the interests are united in that organization?—A. Yes, sir.

Q. Who is the treasurer of that organization?—A. Mr. Stevens, of Cincinnati.

Q. Please state to us the character of that organization, if you please.

Mr. COCKRELL. When gotten up, and so on.

The CHAIRMAN. Yes; give us the machinery, and what its objects and purposes are.—A. I think it was organized—there had been several attempts to have an organization, but one was never perfected until the fall of 1879, when the organization was formed at the instance of the high-wine distillers. They believed that the rules and regulations of the Internal Revenue Department affected the practical working of the distilleries in relation to the fermenting period, and it was thought if we could get together and come to Washington we could get the law changed.

Q. When was that?—A. That was in the fall of 1879—that we could get the law changed by which distilleries making high wines could get a better regulation in relation to the fermenting period; that the gov-

ernment would not be injured by it, and the distillers would be very much benefited. Two years before that Congress had passed the law increasing the time for keeping whisky in bond from one year to three years.

Q. That was in 1878?—A. 1878. And the interest that I represent believed we ought to have some change in the law in relation to that. The government was charging us interest for the two years extra. We thought we ought to have an abatement of that interest, and that we ought not to pay the tax upon that which was not withdrawn from bond. In preparing the bill it was suggested by some one that there would be no whisky in bond if no limitation was made as to outage; that it should not exceed so much, fixed, I think, at 7½ gallons for three years; that if it exceeded that amount we had to pay the tax upon the whisky whether it was in the barrel or not. So the two interests united; one wanted a change in the fermenting period, and the other wanted the interest for the two years taken off and the proper allowance for shrinkage.

Q. Were the high-wine people interested in these things you speak of in the fermenting period, or in the abatement of the interest?—A. They were interested in both, because the high-wine men believed they would be benefited by it.

Q. What did they accomplish by the legislation they sought for in 1879?—A. They wanted to get a change in the law; the manner in which the law required them to ferment their whiskies. The law required that when the beer was in the fermenting tubs it had to be turned out at a certain hour. It was turned out at that hour, at all seasons, warm and cold. The distiller would not get as much whisky out of the grain as he would if it was turned out when the beer was in a proper condition; when it was just exactly in a condition to distill. General Raum possibly is the most practical man we have ever known in the department. He is a man who has made a study of these things, and he saw the difficulty, and went before the Committee on Ways and Means and explained it to the committee and they saw it and reported the bill.

Q. Now, to come at the point exactly. The high-wine men wanted a change in the law as to the mode of distilling. Did they want to get the law changed also as to the time of the bond?—A. Yes, sir; they made no objection to it. There were a few high-wine distillers objected in Peoria, Ill.

Q. But in 1879 they joined with you gentlemen in seeking the change?—A. They joined the association in 1879.

Q. The association was formed in the spring or fall of 1879?—A. In the fall of 1879.

Q. And it was for the purpose of securing this change of law?—A. It was formed for various purposes. It was formed for that purpose. We believed, for instance, that by uniting together we could come to Congress and ask just laws. We knew that we were large contributors to the government, and we believed that if we came here with intelligent representatives from among our own people who would present to Congress requests that affect our business, they would listen to us better as a body than if each man came separately.

Q. Now tell us, as near as you remember, what kind of an organization that was. In the first place, where did you organize it?—A. We organized it in Cincinnati.

Q. Was there a public meeting in which all the distilling interests were largely represented?—A. Yes, sir.

Q. How was the notice given; was it by writing to the parties or

public notice?—A. Published; everything was public and published in the papers.

Q. It was an open convention?—A. Yes, sir; there are two or three papers in the county entirely devoted to our interests.

Q. Can you give us a copy of the call for that convention?—A. I can get it for you, but I can't give it now.

The CHAIRMAN. I will be obliged if you will furnish it.

The WITNESS. I can give you the copy of the proceedings with it. Everything we have ever done has been published in all the Western papers. We never had a secret meeting; we never had a meeting that was not exposed to the public, and everything has been published in the Western papers.

Q. How largely was the distilling interest represented at that first meeting?—A. I think possibly half of the distilling interests—more than half, I think.

Q. Is not there another organization with other officers?—A. Yes, sir; there is an organization in the West, that was formed about five or six months ago, called the Western Export Association.

Q. Who is the president of that?—A. Mr. H. P. Miller, of Riverton, Illinois.

Q. Who is the treasurer?—A. I think Mr. Stevens; I am not certain though. But when Mr. Shufeldt gets here he can give you all the information about that, and will be very glad to do it. He can tell you all about it; but I cannot tell you about it from my own personal knowledge. I am not a member of it.

Q. You are not a member of that organization—you are of the other?—A. I am a member of the other.

Q. Are those two organizations in entire harmony with each other?—A. They have nothing to do with each other whatever. This last association was formed for the purpose of regulating production and maintaining prices in this country. It is a sort of pooling arrangement.

Q. The other was formed for general purposes, especially for legislation?—A. The other was formed for general purposes.

Q. To protect their interests in various ways, to get changes of the law, &c.?—A. Yes, sir.

Q. In carrying out the purposes of that organization you came to Washington in 1880?—A. Yes, sir.

Q. Was it at the instance of that organization that the law of 1880 was passed; I mean at their suggestion?—A. There were ten or twelve of us who came here from various parts of the country.

Q. Was the law that passed, the law asked for by the organization?—A. Yes, sir.

Q. Or did any of you have a different sort of law in mind?—A. The law that we asked for I think was passed without any change whatever, without the dotting of an "i" or the crossing of a "t."

Q. Who drew that act?—A. It was drawn by this committee. There was a rum interest from Boston; that was represented by Mr. Felton, of Boston; then the Pennsylvania interest was represented by Mr. Hannis, of Philadelphia, and Mr. Sennott.

Q. That is the bill known as the Carlisle bill?—A. Yes, sir.

Q. That is the one, if I understand it rightly, which established the bonded period at three years, and abolished the 5 per cent. interest?—A. No; that did not establish the bonded period at three years; that was done in 1878; that was in the Saylor joint resolution.

Q. Well, as I understand it, the bonded period was made in 1878, and with interest at 5 per cent.?—A. Yes, sir; after the first year.

Q. But the law of 1880 left the bonded period at three years and abolished the interest, and reduced the bond from double the amount of the tax to the actual amount?—A. Yes, sir; and changed the law in relation to the fermenting period. Those were the three things accomplished.

Q. Both kinds of manufacture were represented at that time?—A. Both represented at that time.

Q. Following the passage of that bill, the next year was a state of affairs which increased the whisky in bond?—A. Yes, sir; that occurred, though, from the revival of the good times. The employment of the labor in the country improved everything; money became plenty, everything was prosperous; not only whisky, but everything else.

Q. Do you know whether the distillers or distilling interest ever adopted any system of promoting sales in bond?—A. I think not.

Q. Have they employed agents to sell in any way, or to find customers for sales in bond?—A. Well, we all have commercial travelers.

Q. You mean the manufacturers?—A. All manufacturers and dealers; we all employ salesmen to represent us throughout the country, just as any other manufacturers do.

Q. What sort of arguments do these agents use as inducements for buying this kind of whisky?

The WITNESS. To buy whisky?

The CHAIRMAN. Yes, to induce customers to buy. If we have an article for sale we generally give some reason why a man should buy it.—A. Well, if he deals in it we generally find him an old customer who has been buying whisky right straight along for years and years, and he wants it again. It has not required much argument for the last few years to sell whisky, but it will require a great deal of argument the next few years to get them to buy.

Q. Usually when a manufacturing establishment sends out agents to sell, it sells to those who want to consume the article?—A. Yes, we do not go to any one else outside of the trade. We go to dealers, those in the business.

Q. Has your organization any constitution or by-laws.?—A. Yes, sir.

Q. Have you a copy of them?—A. I have not; I will bring it to you.

Q. What use have you for a treasurer?—A. Well, sir, he is the custodian of our funds.

Q. Yes, but what use has an organization of that kind for funds?—A. We pay our president, secretary, and treasurer salaries; they are not large salaries.

Q What are the salaries?—A. I think we pay $1,500 a year to the secretary, $600 to the president, and about $400 or $500 to the treasurer. The by-laws will give you the exact amount we pay to each.

Q. Have you ever levied any assessments under your organization?—A. Never.

Q. Have you received contributions in any way?—A. No, sir.

Q. How do you pay your officers, then?—A. Each member pays ten dollars a year. I think each dealer and each distiller.

Q. The ten dollars a year are paid for these expenses, then?—A. Ten dollars a year is paid to be a member of the association.

Q. Do you know how many members of the association there are?—A. Seven or eight hundred.

Q. Are they distillers?—A. Distillers and dealers. Any distiller or dealer by paying ten dollars becomes a member of the association.

Q. He has to be elected?—A. I mean can be elected.

Q. Has there ever been any money raised by your organization to

your knowledge except the ten dollars initiation fee?—A. Not a dollar that I ever heard of.

Q. Have there been any contributions outside of the organization for any purpose within your knowledge?—A. None, sir; none whatever.

Q. Have you employed agents or attorneys at Washington to conduct your business here?—A. The Kentucky interest have employed Colonel Wharton, who sits here at my right, as an attorney to represent them in Washington.

Q. The Kentucky interest, you say. Is that distinct from the general organization?—A. Yes, sir; they are just a few of the Kentucky distillers and dealers who have their business to attend to, and made arrangements with Colonel Wharton to come on and represent them; I think maybe thirty or forty.

Q. Does Colonel Wharton represent the national organization or only these thirty or forty gentlemen?—A. Well, he represents only those, I think. He can answer that question; but that is my impression.

Q. Have you employed any other attorneys than Colonel Wharton?—A. No, sir.

Q. Have you employed agents of any kind here?—A. No, sir.

Q. What compensation do you pay Colonel Wharton?—A. Really I do not know. I am not one of the distillers or dealers that employed him. I thought, if I could get away from Louisville, I would come on here and attend to the matter myself. I am not one of those who employed him, and do not know what arrangement was made with him.

Q. Is there any understanding that you know of that the general organization is to pay expenses here?—A. No, sir; there is no such understanding that the general organization is to pay my expenses.

Q. Or any expenses?—A. Or any expenses; I do not think there is. I think, though, that whenever the general organization has money enough in its treasury, they will pay the expenses of those who have neglected their business to come here and attend to it.

Q. It is expected, then, that when they do raise money, these expenses will be paid by them?—A. I think they ought to. I think they will.

Q. Do you know whether the other association is expected to contribute any part of the expenses here?—A. I have no idea they will contribute one cent, for they have nothing whatever to do with this business. All I know is what I have read in the papers. I have been reading for months that the Western Export Association had meetings at Cincinnati and Chicago for the purpose of regulating the home market and providing for the surplus by shipping it abroad.

Q. I saw reports of a meeting at which Mr. Atherton, or some one, expected to raise $5,000 for expenses here, and succeeded in raising only $1,200, and had to adjourn the meeting. Do you know anything about that?—A. I know nothing about that. In all probability it is correct, but I know nothing about it.

Q. In your intercourse here have you ever been approached by the lobby here, or by any outsider, with a view to obtaining employment?—A. I have not; no, sir.

Q. Do you know of any such instance having occurred to others?—A. No, sir; I do not. A great many newspaper men have called upon me at various times, but always with a view of getting information in relation to the bill in order to telegraph it to their papers; but no one connected with the press has ever approached me in relation to money.

Q. Any one not connected with the press?—A. No one at all.

Q. Do you know of their having approached any one else?—A. I do not, sir.

By Mr. HARRISON:

Q. You have never heard anything on that subject?—A. Oh, I have heard a lot of talk in the newspapers; read it in the newspapers.

By the CHAIRMAN:

Q. Have you heard any talk among the friends or promoters of the bill?—A. No, sir; I have not.

Q. Did you state when the other organization was made and when it expires; I think that was last fall, was it not?—A. I think they organized last fall; and I think that under their agreement it expired on the first day of May. I think they are now meeting at Chicago. I saw in the papers they were having a meeting in Chicago last Friday or Saturday, with a view of trying to resuscitate it; to make a similar arrangement to go on.

Q. Do you know anything about the amount of money they have raised to carry out their purposes?—A. Seven hundred and sixty thousand dollars was what had to be raised to pay the losses upon the alcohol exported abroad. I know that from reading the president's statement.

Q. Within what period has that amount of money been raised?—A. It has been raised within five or six months. I think there are 50 distillers in the organization, as I understand it—and I read it from the press—I think there are 40, or 50, or 60 high-wine distillers. Of course, when they run they make a great deal more high-wine than this country requires, and they export the surplus, which is sold in Europe at a loss, and that loss is made up by those who sell in this country at a profit. All of the earnings are pooled, and a man who ships abroad makes as much upon every bushel that he mashes as a distiller does who sells in this country. There is a similar arrangement with railroads where they pool their earnings. Mr. Shufeldt can tell you all about it.

Q. Do you know whether that organization included all the high-wine distillers?—A. I think there are some few who did not go into it.

By Mr. COCKRELL:

Q. How often have you been here in Washington?—A. I have been here four times.

Q. When were they?—A. I was here in 1880; I was here when they passed the bill in relation to making allowance for leakage to the seaboard for export alcohol; that was in December, 1879; I was here in 1878; I was here in December, 1879. Then I came here again in March, 1880; then again about two months ago I came here, after the Dunnell bill was reported from the Ways and Means Committee and it was put on the calendar of the House. When I saw the bill printed in the Courier-Journal, as I am quite a large owner, and have quite a stock, I felt interest enough in the bill to come on to Washington and try to give intelligent information to those whom I knew.

Q. In any of your visits here, did you find any one who claimed to be employed to represent the distilling or dealers' interest, who claimed to you that he was representing them?—A. Did I ever find any one?

Q. Yes; did any one ever approach you and say they were representing any interest?—A. Well, when I came here in 1878, I met Colonel Moulton, of Cincinnati, here representing a Cincinnati interest. Then when I came here in the fall of 1879, I came with Mr. Miller, the president of this Western export association; Mr. Woolner, of Peoria; Mr. Zell, of Peoria, and Dr. Rush, of Chicago. When I came again in the spring of 1880, I came with about twelve gentlemen: Mr. Shufeldt,

president of the association; Captain Stagg, Mr. Felton; Mr. Crichton, of Baltimore; Mr. Kellogg, of Cincinnati; Mr. Mills, of Cincinnati—perhaps about twelve of us—and after we had the bill drawn, before we submitted it to the Committee on Ways and Means, they all went home with the exception of Captain Stagg and myself. We staid here until the bill was completed, and the association paid the expenses. It was in the spring of 1880. The association paid my expenses. The treasurer in his annual report to the association accounted for every dollar, and that was published in all the Western papers.

Q. Now, at any of these times did anybody here in Washington claim to you that he was representing a like interest that you were; that he was employed to represent them?—A. No, sir; I do not know of any one.

Q. Did any one approach you representing that he could secure favorable legislation, or that he had influence with any members of the House or Senators?—A. No, sir.

Q. No one, then, ever approached you at any of these visits, and represented that he had influence with this or that Senator, or this or that Congressmen?—A. Well, I may have heard some talk of that sort, from people I paid no attention to. I cannot recollect now who they were. I may have heard men say they could help. They did not say they had any influence with members of Congress, or with any Senators. Perhaps they might have said that they could help. I paid no attention to it, for I always believed that no one in Washington could undertake to explain this matter. It is one of the most difficult questions in the world, even for members of Congress and Senators to understand; that has been my experience. It is a matter that I never thought any of these people could give any information about.

Q. Did any of them ever approach you with the proposition that if they were employed they could secure certain information?—A. No, sir; no one. I can answer that question possibly best by saying that I have never seen any occasion in any of my visits to Washington where I saw the necessity for spending a dollar for influence. I have never seen the time when I thought there was an occasion for my spending one cent.

Q. How is it to the interest of the distillers in Kentucky, Pennsylvania, and Maryland, and the dealers in the products of the distilleries in those States, to have the bill that passed the House and came to the Senate enacted into a law?—A. How would it benefit them?

Q. Yes.—A. It would do them a vast amount of good, I think, and do the government no harm.

Q. Well, that is just what we want you to explain now. How would it benefit the distillers and dealers?—A. It would put the business in a shape that no harm could ever occur to it. If the whisky could remain in the bonded warehouses until it was withdrawn for consumption, then I do not believe there would ever be an overproduction.

Q. How would that prevent an overproduction?—A. Men would make whisky for their customers. When their customers had all they wanted, they would regulate their business according to the demand that might be made for it. A good business man ought not to make whisky when his customers were all loaded and could not sell it.

Q. Well, it is becoming more valuable every year?—A. If there is too much made it does not become of as much value; it may get cheaper each year. I can tell you a very remarkable thing in that connection. In 1869 and 1870 there was made in these States, where they make whisky for aging, a very large quantity. I went to Louisville from Lexington

and persuaded Newcome, Buchanan & Co., who were then handling sugar and coffee in a large way, to go into the whisky business; I said to them if you will advance the tax, which was then 50 cents a gallon, I can fill your warehouses full of whisky from the interior; the tax has to be paid in twelve months, and the men who own that whisky are not willing to take the price they are offered for it to-day; if you will advance the tax, they will keep it, holding it for better prices, and you can get 10 per cent. interest, which was then the ruling rate of interest in the West; they prefer borrowing the money to selling the whisky. I made an arrangement with them, and got them to go into the business. That was the first whisky they ever handled. I saw that whisky rolled out of that house three years afterwards for the same prices, and it had shrunk in the three years at least six to seven gallons. The cost of making it was in it; the tax of 50 cents a gallon was in it. I saw it rolled out of the house three years afterwards for the same price they refused for it when it was put in there. They had paid 10 per cent. interest and 10 cents a barrel a month storage, and 2½ per cent. commission for selling it. That broke half the men who owned the whisky. When there is an overproduction, prices will not go up, for the reason that there are more sellers than buyers. It is like any other article that is manufactured—when there is too much, the price will not go up.

Q. Now, how would the government be benefited, or not injured?—A. The government cannot be injured, because the country requires so much whisky as a beverage and so much for manufacturing purposes; it requires that much every year, and that much will be withdrawn every year.

Q. Yes, but that fluctuates.—A. Well, as the country grows I think the consumption increases.

Q. In very prosperous, busy times there will be more consumed than in hard times, will there not?—A. The government cannot possibly be injured one cent if the whisky should remain in bond just as it does in England.

Q. Suppose that law passed just as it came from the House, how much would it decrease the revenues of the government, say for the next six months or year?—A. Not one cent.

Q. Would there not be less withdrawn?—A. No, sir; and then, if that bill should become a law, whiskies that we now get $3 for, that is four years old, in my opinion that class of whisky three years from now will sell for $2.50.

Q. Well, then, how would it benefit the dealers and distillers?—A. If the whisky is withdrawn when it is three years old it is then shrinking at the expense of the man who has got his tax in it, and, in order to make money upon it, he has got to sell it for the higher price. If it stays in bond the government loses nothing and the distiller pays the tax on just what is left in the barrel. If the barrel has been tampered with, every barrel of whisky he has got in the warehouse is liable to be seized by the government, and so much whisky is going to be consumed every year.

Q. I want to ask this question in regard to the condition of the whisky in bond. The tax on the whisky in bond now under existing law—not under the prospective law, but under existing law—has already been paid, has it?—A. In bond?

Q. Yes.—A. No, sir; the tax is paid on it when it is withdrawn from bond.

Q. And kept three years?—A. It can be kept three years and then the law expires, and it is withdrawn and the tax paid upon it.

Q. Is very much of that whisky hypothecated?—A. The man who has borrowed the money to buy it with has got it hypothecated.

Q. How much is now hypothecated, and for how much is it hypothecated?—A. I cannot tell you how much is hypothecated. I take it for granted that those who bought largely have borrowed money upon it, from $10 to $15 a barrel.

Q. From $10 to $15 a barrel; no higher than that?—A. I think not. The bankers in our State will not lend more than $15 a barrel upon whisky in bond.

Q. How many gallons to a barrel?—A. Forty-five gallons is about the average.

Q. Do you think that no advances higher than $15 are made?—A. Well, whenever the money market is easy of course they want customers for their money, and they will sometimes ask what is the value of this whisky, whether it is worth $45 or $50 a barrel. If that is the price of the whisky, if it is worth $50 a barrel and the bank has plenty of money, they will lend more than $15 a barrel; but for new whisky $15 a barrel is as much as you can borrow upon it from any of the bankers in Louisville now. The reason I know that to be the fact is that I have had occasion to borrow some myself. That is the most they would lend me. If this bill which passed the House should become a law I feel certain that there can be no speculation in this whisky that is in bond. I am the owner to-day of ten thousand barrels of whisky, and I have got some very fine brands. If I could sell it all and get cost for it I would be very glad to sell it and go out of the business for the next three or four years. If the House bill passed just as it came from the House I do not see any profit in our class of whisky for the next four or five years to come because of over production.

Q. Suppose that bill does not pass, how would it be? Would your condition be changed?—A. I think a great many people in the business would be bankrupt.

Q. You think, then, that that bill would be a relief to them. You would not expect to make anything by it?—A. I think it would be a great relief. I think five years would be a relief. Any extension of the bonded period is a relief—a very great relief.

By Mr. HARRISON:

Q. How is it a relief if you do not sell it for more money than you can get for it now?—A. If it stays there in bond we have got the money in that; but if we have to pay the tax of 90 cents a gallon at the expiration of three years it will break most of the men in the business. All the money they have got is in that whisky, and if they have got to go on the market to borrow money to pay the tax on it and store it away half the people who own the whisky in the country will be bankrupt. It will not only affect the people in our business, but it will affect all classes of borrowers. The whisky men in Cincinnati, Chicago, Louisville, and Saint Louis will be customers for all the money that the banks have got. That will put up the rate of interest, and it will affect all classes of borrowers. There are 80,000,000 gallons of whisky in bond, and in all probability money is borrowed upon at least 50,000,000 gallons of it. Now, when you come to borrow money to pay the 90-cent tax, I think half the men engaged in the business will be ruined.

By Mr. COCKRELL:

Q. How much of that will go out this year?—A. Well, the hard time will commence about the first of next January. From now on until Jan-

uary it will be comparatively easy; there is but a small amount of money to be raised, but from January until July I think it takes about $10,000,000 to pay the tax. Any sort of legislation in relation to whisky, or to anything that affects an article that is manufactured, of course affects the business. The business of trading in whiskies in bond now is completely paralyzed throughout the country because of this legislation. My business is usually about $40,000 a month; it has dropped down now to less than $5,000 a month.

By Mr. PUGH:

Q. I understood you to say that the government could not lose any revenue by enlarging the period of the whisky remaining in bond?—A. Yes sir; I said so. The government could not lose one cent in my opinion.

Q. Yes, could not lose one cent. Well, the government would only get the revenue upon what is left in the barrel when it was withdrawn?—A. It will get ninety cents a gallon upon every gallon withdrawn.

Q. Then does not the government sustain a loss to the revenue to the extent of the waste or evaporation?—A. No sir; the government ought not to have any revenue until it is withdrawn for consumption.

Q. Yes; but that is another question. I understood you to say there was a waste of about seven gallons to a barrel?

The WITNESS. How much?

Mr. PUGH. Seven gallons.

A. Well, that is the natural leakage which will occur, but sometimes when whisky is withdrawn from bond may be five barrels in a hundred will not have five gallons in them. A leak will occur in the stave, and it will leak out; it will go out a drop at a time. A worm in the wood will work its way through and it will just drop out—not enough to make any soil on the barrels underneath, but will go out a drop at a time and exhaust itself. I have seen many a barrel of whisky withdrawn that had not a gallon left in it. I have said that if the bonded period was extended indefinitely, I do not think the government would lose any of its revenue. I will try to explain that to you. Suppose 80,000,000 gallons of whisky are consumed in this country every year, and the chances are that 80,000,000 gallons will be consumed every year, and you withdraw that amount from the warehouse. If every barrel of whisky that is now stored in the bonded warehouses should burn up to-night I do not believe the government would lose any revenue, because the facility for reproducing it is so great; they would go to work and reproduce it. Of course they would get younger whisky to drink, but the government would get ninety cents a gallon. The consumption would go on if every barrel should burn up to-night and the government would not lose a dollar of revenue. Other whisky would be made to take its place. We usually stop making this class of whisky in June or July, and do not commence again until fall; but these distilleries would run July, August, September, and October, and put it right on the market. They would have a supply ready. It is true it would be young whisky.

Q. Well, I cannot understand how it is that the government is to get its revenue upon the young whisky?—A. If the young whisky is withdrawn from bond for consumption the government would get a larger amount than it would at the expiration of five years when the waste was deducted.

Q. They would not get any more if the consumption was not any greater; if the consumption is greater they will get more?—A. The consumption would be of the younger whisky, you see.

Q. Yes.—A. Then the revenue would be greater, because it is on the young whisky that the government gets the most revenue. It is all the same as to the ninety cents, but there is more whisky in the barrel when it is young than when it is five years old.

By Mr. HARRISON:

Q. What Mr. Pugh means, I suppose, is this. You illustrate by a fire in the bonded warehouses. Suppose you pay the tax when it is created and take it out of bond and it leaks or is burned up by fire in your house; now the government receives its tax upon that and it gets another tax on the new whisky that takes its place, so that in that way of course there would be a loss.—A. The only people who can possibly lose any money by an indefinite extension of the bonded period or by any extension is the man who owns the whisky. The government cannot lose one cent. If he paid fifty cents a gallon for forty-five gallons of whisky the day it was made, and it went into a bonded warehouse, and he had a thousand barrels of it and it staid there ten years, at the expiration of the ten years he would have a thousand barrels of whisky with fifteen gallons out of each barrel, but the same number of gallons of whisky will be consumed if consumption keeps up. The government would not lose a cent, but the owner of the whisky will lose all the shrinkage upon his first purchase. If there are fifteen gallons out of it he will lose, at fifty cents a gallon, $7.50 out of each barrel of whisky, and the government will not lose a cent.

Q. Well, your idea is that the time that the whisky remains in bond, if it be more or less, does not affect consumption?—A. Not at all. The chances are that it will improve consumption, because the buyer will get a better article of whisky to drink; and I firmly believe that if the bonded period was indefinite we would have a very large export trade. If our whisky could stay in bond indefinitely my impression is that when it is six, seven, eight, nine, or ten years old it would be exported and find a market, just as old brandy from Europe finds a market in this country. You can bring brandy from France fifteen years old to the New York custom-house, and pay the duty for just what is in the barrel. The duty applies to just what is in the cask and no more; and I believe if our whiskies could go into bond and stay there indefinitely we could build up a trade in all European countries, because I believe it is a better liquor than they can make. It is made out of better material; and I believe it would be a great outlet to the grain of the West in the shape of whisky.

By Mr. PUGH:

Q. You say you are no chemist, nor am I either; but I am curious to know if there is any difference in the chemical properties of alcohol whatever it may be derived from—water, grain, fruit, or anything else. Is not all alcohol the same?—A. No, sir. Now let me try to explain that to you. I am no chemist, but maybe I can explain that.

Q. Yes, I should like to understand it.—A. In making this cologne spirit, or alcohol, in distilling it they extract from it the fusel oil, and that is a product that finds a market for itself as fusel oil. In making whiskies for aging purposes, that fusel oil is left in the whisky, and is not extracted. There are other oils in it, but I am not chemist enough to speak about them. I am speaking now of fusel oil. That whisky is only partly manufactured when it leaves the still-house and goes into the bonded warehouse. There it completes its manufacture by a certain chemical change that goes on in the barrel. The barrels are charred; they are made of oak. Nothing but oak will do to put that kind of

whisky in. The barrels are charred heavily. The pores of the wood are opened, the tannin of the wood is extracted by heating it. That gives the whisky a color, and a certain oxidizing goes on as the whisky shrinks; as the water leaves it the whisky gets less and less every year, and those oils disappear. I do not know where they go to; but you can take whisky that is ten years old and analyze it, and you will find no fusel oil in it. There is nothing there that is of a poisonous character; but I am not sufficiently a chemist to explain that matter any further.

Q. Does not the new process of distilling expel the fusel oils now?—A. In high wines distillers take it all out by distillation; they run it through columns. The high wines are not free from fusel oil, but they have distillation; they run it through a column and take the oil out of it. It has no smell; it is completely deodorized. For instance, a compounder takes a barrel of first rate cologne spirits, and believes he can make an improvement upon the whiskies we make in Pennsylvania, Maryland, and Kentucky, because he says his is perfectly pure spirit. He will blend it with the class of whisky we make, and put ten, fifteen, or twenty gallons with the same quantity of whisky made for aging, and then he will put enough coloring matter with it to bring it to its natural color; and the men who deal in that article believe they make a better article than the original. Nearly all whisky sold in Washington is that class of whisky. It is manufactured in Baltimore, Philadelphia, and New York. It is the class of whisky that is used here, and it is really nice, good whisky.

By Mr. HARRISON:

Q. I understood you to say that coming on here to aid as you could in the passage of this legislation, which you thought to be just as between the distiller and the government, you came on your own account, without any reference to any association?—A. Yes, sir, I did.

Q. Came here simply as an individual dealer?—A. Yes, sir. I have been here before. I am like any other merchant who is interested in any bill which is before Congress affecting his business. There were a great many of my friends in the business who believed I had a personal acquaintance with Members and Senators, and having been here before they urged me to come.

Q. How have you sought to promote the passage of the bill? Have you been before any of the committees?—A. No, sir; I have relied entirely upon the Senators from Kentucky, and Members from my own State.

Q. Then you have sought to do it simply by personal intercourse with those you knew?—A. I have only approached those I have personally known. I have never importuned them.

Q. But in talking with them you have laid before them such conditions as you have presented here with reference to it?—A. Yes, sir.

Q. Now, I understood you to say in response to Senator Cockrell that there might have been some persons—you thought there had been some, perhaps, you could not recollect their names—who had suggestedto you that they could help.—A. No one ever made a suggestion to me that I could say looked to the payment of any money.

Q. That I was not getting at at all, but simply whether any others, any outsiders, any people around, had suggested to you that they could aid in the passage of the bill?—A. Well, none that I can recollect now. I have sat around the hotel and talked with people about it.

Q. I understood you to say to Senator Cockrell that you had heard

such suggestions from some one, but perhaps could not recollect the names.—A. Yes, sir; I have seen it in the papers more than I have from personal experience.

Q. Well, we are anxious to get just at that point, and if you can aid us any, I wish you would, namely, whether there has been any self-constituted lobby of any kind here that has been seeking to impose itself on you gentlemen?—A. I do not know of any whatever.

Q. Do I understand you to say now that you do not recollect of hearing any one say anything on that subject?—A. I might some years ago when I was here, but it has slipped out of my memory.

Q. Since you have been here this time, do I understand you to say you have not heard at all from any person the suggestion that they or others could aid in any way in securing the passage of the bill, or promoting it?—A. I have not heard any one say so.

Q. There have been no offers of service of any kind to you by any one?—A. No, sir.

Q. Or, so far as you know, to others?—A. I do not know of any proposition ever being made to others.

Q. If not of your own knowledge, have you heard from others who are interested with you in this matter any statements that they had heard suggestions from persons that they could aid in the passage of the bill?—A. No, sir, I have not.

Q. You do not know of your own knowledge of funds being collected here of any individual distillers or company, any association of distillers for the purpose of employing agents or attorneys, or paying any expenses of any kind in connection with this legislation?—A. I know that money was raised in Louisville—I saw it in the papers—for the purpose of paying expenses.

Q. You know that simply from what you saw in the papers?—A. Yes, sir.

Q. You were not assessed or approached yourself for any contribution with reference to it?—A. I was not; no, sir.

Q And made no contribution?—A. I made none. I have a friend in Louisville who was exceedingly anxious to bear a part of my expenses, and I have a friend in Baltimore who was exceedingly anxious to bear a part of my expenses, and one of them sent me $200 and the other $300.

Q. Those were voluntary contributions by persons engaged in the same business with you who wanted to contribute to your expenses?—A. Yes, sir.

Q. I understood you to express the opinion that if whisky could remain in bond indefinitely there would never be any overproduction?—A. Well, I will try to explain that matter to you.

Q. I only wanted to know whether I was right as to your opinion?—A. I think that if there was an overproduction it would be temporary. I put it too strong when I said there never would be an overproduction. I think, in all probability, if there was it would be of a temporary character.

Q. Now I want to ask you whether, according to ordinary business experience, an indefinite extension of the bonded period would not directly tend to overproduction?—A. Well, I can only answer that question by giving you a reason. We will say now that every dealer in the country is loaded up with whisky. The distiller who made that whisky for the dealer knows that fact. It certainly would not be to his interest to go to work and make whisky to find this man's customers to sell it to. He has got a customer in the man who will take so much from him

every year. I do not believe he would go to work and make whisky for the purpose of selling it to his customer's customers, which he would have to do if he made it. I do not think there would be any business sense in that.

Q. Now let me put this question to you: Take the ordinary grade of whisky, which, you say, costs about 22 cents to make. Now if the manufacturer of that whisky can by an investment of 22 cents on the gallon store a warehouse full of it, and may calculate that he can take it out whenever he pleases, let it lie there, if he chooses, five, ten, fifteen years, is he not more apt to produce in excess of the demand than he would be if there were an immediate call for the tax, and his investment instead of being 22 cents should be that much and the tax added?—A. Well, the man who makes that whisky does not make it for the purpose of putting it in the warehouse. He makes it for the purpose of selling it the day he makes it.

Q. He sells it free?—A. He sells it free.

Q. It cannot be all sold free, or we would not have any use made of this extension of the bonded period.—A. The extension of the bonded period is not for him.

Q. Who is it for?—A. It is for the distiller who makes a different character of whisky.

Q. Is not there more apt to be an overproduction if the distiller has only to invest his 35 cents per gallon, and can store that whisky then and put off the period of the tax indefinitely, than there would be if the tax must be paid presently; is there not an element that would indirectly tend to overproduction or speculation?—A. Well, I will say this, that there are men engaged in the business who, if they had the money and had the credit, would make it and put it in their warehouses, but I think one or two attempts of that sort would cure them—satisfy them that there is no money in it.

Q. That may be, but is there not an element that strikes you, as a business man, that tends directly to the accumulation of whisky and production for speculative purposes; is there not such an element in the very fact that you have an investment of only 35 cents, when the market price is 90 cents more?—A. The market price will not be 90 cents more, because a man can buy his own whisky already made cheaper than he can make it, if there is overproduction.

Q. That may be true when the overproduction is on, but I will take the period now. Suppose there is no overproduction; suppose these bonded warehouses cleared out, and you have no more than enough for the current demand; suppose you pass that bill removing all limitation upon the time when whisky shall be taken out of bond; do you not think that the immediate effect of that would be to swell production immensely and in a speculative way?—A. They would do it certainly if there is not an overproduction.

Q. Then the only check you have is the present overproduction? You say there is a present overproduction which will have a tendency to check this speculation; but when that is gone, is not the danger that I speak of then upon you?—A. If there is not an overproduction now with an indefinite extension of the bonded period, my impression is that distillers would fill their warehouses, but it is certain that there is not one man in ten who is a good business man who is engaged in the distilling business that would make any more whisky with an extension of the bonded period than if it was made for five years. A good business man would not do it.

Q. That may be. But we do not find in that business or any other

those prudent rules you speak of. There is an almost universal tendency to speculation, and I want to ask you, have not your own statistics here shown that the extension of the bonded period did result in this very overproduction, and are not you now simply asking legislation to relieve you from the condition of things that was brought about by the change from that law?—A. I do not believe that the extension of the bonded period had that effect.

Q. Well, this overproduction came on right after that?—A. No, I will tell you what brought it on.

Q. Well, in regard to time, I know what is posterior in time is not always a result; but the fact is, in this case overproduction succeeded the extension of the bonded period, did it not?—A. That is a fact, but it came with the revival of good times and the short stock of whisky before; that is more the cause of it than the extension of the bonded period, in my opinion.

Q. But, yet, you do not think there would have been as much accumulation of whisky on hand after it if the bonded period had not been extended, do you?—A. I do not think there would have been; distillers will make whisky and sell it in bond as long as people will buy it.

Q. And the longer the bonded period is the more the people will buy in bond?—A. I do not believe there is a man in the country that you can induce to buy whisky who is now overloaded with bonded whisky.

Q. That may be; but is it not practically dealing on a margin where a man may buy whisky in bond and pay 22 or 35 cents, according to the grade of it, when it is worth, either grade, 90 cents more on the gallon? Is it not practically giving a man an opportunity to deal on a margin, and the louger you postpone the day of settlement when the man must take the product, does it not tend to speculation?—A. Whenever a man can buy whisky in bond, I do not care how much he has got, and can sell it at a profit, he will buy and sell it, and the distiller will make it.

Q. Then am I not right in saying that it introduces practically the business of buying whisky on margins, to pay 22 to 35 cents a gallon and postpone indefinitely the day of settlement?—A. I cannot agree with you on that point.

By the CHAIRMAN:

Q. I want to ask one or two questions on another point called out by your statement. You said, in answer to Mr. Pugh, I think, that if this law were passed now it would not decrease the revenues of the government one cent. I want to go into that a little further. You made that statement; you understood it so?—A. Yes, sir.

Q. You say the total amount of whisky in bond to-day is about eighty million gallons?—A. I think so; or will be on the 1st of July.

Q. Well, substantially eighty million gallons now. Does not the tax on that whisky mature within an average of about two years.—A. Yes, sir; it comes out three years from the day it was made, so that there will be about as much come out in the first year as in the last year.

Q. Now, if this bill should not pass, will we not receive the $72,000,000 within an average of two years?—A. Yes, sir.

Q. If the bill does pass, will we receive that average of $72,000,000 in that time?—A. You will.

Q. In two years?—A. Yes, sir—no, sir; you will not receive the $72,000,000 in the two years, but you will receive as much money as you are receiving now every year. If forced to pay it all in two years, the revenue will diminish from that kind of whisky in the years following.

Q. But that is not my question. You admit, then, we will not receive the $72,000,000 in two years?—A. No, sir; you will not.

Q. It will be postponed under the extension six years longer at least?—A. The tax upon that identical whisky will be postponed, but you will get as much tax as you are getting now, and more, if more whisky is consumed.

Q. Yes; but we should have this money on hand at once in two years if we do not pass this bill.—A. You will not have it from this identical whisky.

Q. Why not? If under the law this tax must be paid within an average, say, of two years, why will we not get it?—A. Please put that question to me again; I do not quite understand it.

Q. The question is this, to state it more fully: We have $72,000,000 that will be due in an average of two years; the law specifically requires it to be paid then, and assuming the average of two years; will we not get it if the law does not pass?—A. You will.

Q. Will we get it if the law does pass?—A. You will not get it upon that identical whisky.

Q. Is the consumption 80,000,000 gallons in two years?—A. Yes, sir.

Q. You stated awhile ago it was about fifteen millions a year.—A. The payment of the tax upon this whisky is postponed. Now I understand you. Of course the payment of the tax upon that whisky will be postponed.

Q. And we shall lose the interest upon it?—A. The government will lose the interest upon that whisky, but not the revenue from the whisky.

Q. But we lose the interest on the whisky that is now due?—A. Yes; you will lose the interest upon that money, but you will not lose any revenue.

Q. You gave us an illustration awhile ago of the failure of certain parties, in which you said they had paid all the expenses on whisky and then sold it for less. What year was that?—A. That whisky was sold in 1873, 1874, and 1875. The whisky was made in 1869, and paid the tax the year afterwards.

Q. What was the price of the whisky at the time the tax was paid?—A. They were offered $1.50 a gallon for it, tax paid.

Q. And what was it afterwards when they sold it?—A. It was kept three years and sold for $1.50 a gallon.

Q. What is the cost of storage per annum per gallon?—A. It costs five cents a barrel, a month, to store it. The distiller gets that.

Q. Five cents a barrel?—A. Five cents a barrel, a month; sixty cents a year, a barrel.

Q. What is the cost of insurance?—A. It depends upon the character of the house. Upon first-rate warehouses, fire-proof warehouses, the insurance will average, I suppose, from 60 to 75 cents on the $100 valuation, in the East here; in the West it is more. In the West it is about 85 cents on $100.

Q. Something like 60 or 75 cents on a hundred dollars valuation?—A. Yes, sir.

Q. What is the cost of the barrel that is used?—A. The barrels that we use cost from $2 to $3 each. A high-wine barrel costs about $1.25.

Q. In selling the barrel of whisky, do you sell the barrel too?—A. We sell the barrel of whisky for so much a gallon; that includes the package; we do not charge for the package.

Q. Is there any other expense of the bonded system to the distiller or owner except the insurance and the cost of the barrel—that you

would have any way—and the storage?—A. Yes, sir; we have expensive warehouses which high-wine distillers do not have.

Q. The cost of storage is the cost of warehouses, is it not?—A. Storage is charged for keeping the whisky for the owner, but the interior is filled full of substantial racks, and the barrels are rolled in and tiered one above another.

Q. I am speaking of the owner. What does the owner have to pay, besides the three things I have mentioned: the cost of the whisky, storage, and insurance?—A. That is all.

Q. That is all the expense there is?—A. That is all.

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WEDNESDAY, *May* 31, 1882.

HENRY B. MILLER sworn and examined.

By the CHAIRMAN:

Question. Where is your residence?—Answer. Riverton, Ill.

Q. Please state your business or profession?—A. I am a distiller.

Q. Where are your distilleries?—A. In the eighth district, State of Illinois—the Sangamon district.

Q. What place?—A. Riverton.

Q. What sort of whiskies do you distill?—A. With the exception of probably three or four hundred barrels I have not made a gallon of anything in the last four years but what was exported. I am almost entirely in the export trade.

Q. What kind of spirits do you export most of?—A. Alcohol; we do that to concentrate it, get more into a barrel.

Q. What is the capacity of your distillery?—A. We rate at 2,250 bushels per day.

Q. How much does that make of the exported article?—A. We make a little more than two wine gallons to the bushel, and taking two wine gallons as a basis, that will be nearly four proof gallons.

Q. Are you connected with any organization?—A. Yes, sir.

Q. What is it called?—A. The Western Export Association.

Q. You are the president of it, are you not?—A. Yes, sir.

Q. When was that organization made, and what are its purposes and objects?—A. The organization went into existence on the 9th day November last and expired by its limitation on the 1st day of May. The purpose of the organization was to export the surplus product, the overproduction, out of the country, so as to maintain the domestic market.

Q. Why did you limit its time?—A. We supposed that by the 1st of May our stables would be about all emptied of cattle. We are all heavy feeders and turn the cattle out before the shrinkage in the price. The shrinkage in price took us about the middle of November. We generally market our cattle about the first of April, and market sometimes until the middle of June, but we supposed that by the first of May we could sell our cattle so that we could voluntarily reduce the capacity, and further association would be unnecessary.

Q. This is only a temporary association?—A. Only temporary; we are trying to reorganize it now.

Q. What cause or necessity is there for that organization?—A. It is in our business like a great many other different kinds of business. In this grand boom there was a great deal added to the capacity, and the two years previous we exported about sixteen million gallons each year

out of the country. We had very prolific crops in this country, and Europe had a failure for two years. The exports amounted to about sixteen millions a year, and that gave a great impulse to our business. Two immense distilleries were built in Peoria of five thousand bushels each. We had a failure of our crop in this country, and they had a very prolific crop throughout Europe. The consequence was they could make alcohol cheaper in Europe than we could make it in this country, and all at once there was sixteen million gallons of ours withdrawn, the demand cut off.

Q. Upon that you organized the association?—A. Then the prices commenced to recede, until about the middle of November they receded to $1.08 a gallon. That was 18 cents above the tax, and the article could not be made short of about $1.14. We were losing about 4 cents a gallon on every gallon we made. The thing looked desperate; we called a convention of all the distillers to see whether there was any way by which we could help ourselves; but we found that we were so much overstocked with cattle that it was impossible to come down to even half capacity, and even that would overproduce. The only remedy, then, was to export the overproduction out of the country, and we formed this association. Railroad people call it a pool. The word pool seems to grate harshly on the ear, and we called it an association. We levied a certain amount of tax on every barrel mashed, and that money was used to pay a bonus on the overplus that was exported out of the country, and in that way we were enabled to maintain prices. So, while we have not made a great deal of money, we did not lose any money; and I think those distillers who owned their cattle have made a great deal of money on cattle. They have had rather a prosperous year.

Q. What was the amount you paid on exports, the bonus per gallon; how did you adjust it?—A. I have it here in a very neat form and will read it:

| | | | | | | |
|---|---|---|---|---|---|---|
| We exported | 93,444 | wine gallons, | at | 7 | cents | bonus. |
| | 146,641 | " | " | 10 | " | " |
| | 427,003 | " | " | 12 | " | " |
| | 267,017 | " | " | 13 | " | " |
| | 335,350½ | " | " | 15 | " | " |
| | 220,033 | " | " | 17 | " | " |
| | 1,258,197 | " | " | 20 | " | " |
| Total.... | 2,747,685½ | " | " | Average bonus, 16¼ cents. | | |

These are high wines that are ninety-four per cent. proof. This is up to the 1st of April. There is still a month to come in.

You see, Mr. Chairman, we had to export such an immense amount, had to come into such sharp competition with Europe; in Spain there were several alcohol houses that made very heavy contracts with Germany, thinking that the United States could not export any, and those houses, of course, broke. We exported so much that we filled up Europe, and the price receded. First along we got 40, then 39, then 38, then 37, until finally it was 32 cents in New York. As the price receded in New York we had to make it up in our bonus—7 cents bonus at first—but as the price receded we had to increase the bonus until we reached 20 cents on each gallon. That was an attempt to keep the exports equal to the domestic market.

Q. What was the total amount paid out in that way?—A. We paid from the time our organization started, on the 21st of November, up to the 1st day of April $590,563.87. We paid bonus on alcohol $446,194.38; we paid cut capacity—that is, if a man who was entitled to run a thou-

sand bushels whose capacity was 1,000 bushels ran only 800 bushels, it was cheaper to cut down capacity as far as we could than to make the goods and export them; we paid for cut capacity two cents a bushel, $71,612.25; we paid for maintaining the Cincinnati market $63,809.64. There are a great many distillers in that part of Ohio who do not keep up with the spirit of the age, and cannot make anything but high wines. The high wines are going out of existence; they are substituting cologne spirits, French spirits, and other distillations, and the article of high wines is scarcely known now except in the Cincinnati market, and they were making too much of these high wines there and we could not export them. First we attempted to get rid of them by shipping them into the Baltimore and Philadelphia markets. We did that until we broke the market there. Then I took off two houses and purchased the product and exported the alcohol, and in that way we got it out of the country. The balance that remained we bought and manufactured into free alcohol. Then there was $1,138.34 paid for running expenses, making a total sum of $590,563.87. April is to be added; it comes to a little over $700,000. I have here with me the name of every man who paid in this money, and the name of every man to whom the money was paid. It is published monthly by our treasurer. That was for our own safety, to show our individual members for what use the money was received, and what disposition was made of their money after received.

Q. Can you leave us that?—A. Yes, I will leave it. I have not got the December assessment. The December assessment was only 1 cent a bushel. The extra capacity always had been 5 cents a bushel additional. They were charged for regular capacity, but regular capacity in the month of January I think the assessment was 4 cents, and then 1 cent, I think for deficiency. In the month of February we had to go up to 10 cents a bushel. In the month of March we had to go up to 15 cents a bushel. Some houses paid as high as $14,000 and $15,000.

Q. Then that was not sufficient?—A. Then we had to make an extra assessment of $3 a bushel for one day, and then we made an assessment for April of 10 cents a bushel, and we finally made another assessment to pay all our debts of 2½ cents a bushel, and 40 cents a bushel tax for one day, and we explain it in this way:

In view of the treasurer's statement that the existing debts, after deducting the cash on hand and the outstanding accounts, which are considered collectible, are about $19,000 for liabilities contracted to April 1, and about $22,000 for April debts, which the 10 cents' adjustment would not meet, the assessment for deficiency on April 1 should have been $3.40 per bushel instead of $3 per bushel, and for April 12½ cents per bushel instead of 10 cents.

We did not get our assessment quite high enough, and this is a third assessment to cover the deficiency and pay our debts.

Each house has been therefore assessed 40 cents per bushel on the same average basis as the $3 assessment, and the 2½ cents a bushel on grain actually mashed in April.

These are assessments that I made. I make these assessments and then send them to our treasurer, and if the parties do not pay up within five days the treasurer draws his drafts. I must say that I never knew a body of men to pay so willingly and cheerfully as the distillers have. There are only a few instances where the men are impecunious, where they really could not pay.

I have also the proceedings of the distillers' meeting in Chicago, on November 17, and the articles of agreement under which we organized, which I will leave with you. There are only two articles bearing on the subject. The balance is detail. That is for the exportation of this

overplus that we were manufacturing, to get rid of it. We have exported 6,000,000 or 7,000,000 gallons out of the country. If that had been thrown on the American market it would have brought the sale in the American market down to the same price we were receiving for exports, and would have ruined one-half of the distillers in the country. It was a matter of self-protection. These assessments existed in almost all branches of trade; the linseed oil trade, the paper makers, the white lead works, nail works, Bessemer steel works—every branch that can be organized. The overproduction seems to be so great in all branches of business that every branch that can be organized is organized.

Q. You say you have not the special assessment here?—A. No, sir; I will send it as soon as I get home. Here is the result of the three-dollar assessment; also our report for January, February and March (handing them to the chairman).

By Mr. COCKRELL:

Q. Have you got the treasurer's report there for January?—A. Everything up to April.

Q. The treasurer's report for April is not out yet?—A. It is not made out yet. We have not got our debts all paid yet.

Q. Who is your treasurer? Is he here?—A. No, sir. The treasurer is Mr. Hobart, of Cincinnati, Ohio.

Q. Could you not have the paper made out for April and May?—A. Our association expired by limitation on the 1st of May; we only have April.

By the CHAIRMAN:

Q. That is the $3 assessment. Will you state what you mean by the $3 assessment.—A. Now, here is a house—I will take my friend Mr. Shufeldt as an example—his house has capacity of 3,600 bushels, his half capacity is 1,800 bushels. We assessed him $3 a bushel as an extra assessment to help us pay these immense heavy sums we had to pay to get these goods out of the country. We assessed him $3 on the 1,800 bushels, making $5,400. A house with 2,000 bushels capacity entitled to run 1,000 bushels would pay $3,000. A house with 1,000 bushels running half capacity 500 bushels would pay $1,500.

Q. That is, you assessed $3 on half capacity for one day?—A. On hal capacity of their distilleries for one day, and the 40 cents for one day is the same.

I wish to hand you the proceedings of one of our committee meetings held at Chicago March 28, 1882, where we resolved that an assessment of $3 a bushel for one day be made on the average capacity of each distiller as operated since the existence of our association to April 1, for the prompt payment of our indebtedness.

## WESTERN EXPORT ASSOCIATION

### EXECUTIVE COMMITTEE MEETING.

Executive committee met in Chicago, on Tuesday, March 28, 1882.

Present, H. B. Miller in the chair; Treasurer Hobart, and Messrs. Abel, Gaff, Stevens, Beggs, Bevis, Clark, and Woolner as proxy for Mr. Zell.

The minutes of the last meeting were read and approved. The treasurer then gave a full and complete statement of the financial matters of the association, from which it appears that the association will owe, on April 1, $160,000.

The following resolutions were then introduced, and after a free and full discussion were unanimously approved:

"Whereas the Western Export Association has demonstrated the wisdom of calling it into existence—has saved the distillers serious losses, and been a benefit and source of profit to all of them; and

"Whereas it appears from the report of the treasurer that the same is indebted to

its members some $160,000, caused by the tax agitation and immense over production in February and March, and that good faith to each other requires the prompt liquidation of every cent of the same, so that if another exigency should arise by which we must make common cause for our mutual protection, there shall be left no heart-burnings behind; therefore,

"*Resolved*, That an assessment of *three dollars a bushel for one day* be made on the average capacity of each distiller as operated since the existence of our association to April 1, for the prompt payment of our indebtedness, the same to be payable on the 1st day of April, 1882.

"*Resolved*, That the usual assessment be made for the expenses of the association for the month of April, the same to be *ten cents a bushel daily*, payable on the 10th day of April, *and that credits against the association by the distillers be applicable to both assessments.*

"*Resolved*, That the price of highwines be maintained during the month of April at $1.17; that the bonus on export alcohol be continued at 20 cents a wine-gallon, and that reduced capacity previous to March 1 be paid the usual amount, and all future cut capacity be entitled to 10 cents a bushel daily."

The bills of Messrs. Stevens, Dair & Co. for moneys advanced in sustaining the Cincinnati market, and carefully scrutinized by Messrs. Hobart, Gaff, and Beggs, after a long discussion were unanimously ordered paid, as far as approved by the above committee.

The following resolution, viz: "*Resolved*, That the question of maintaining the Cincinnati market be referred to Messrs. Hobart, Gaff, and Stevens, with power to act," approved at the meeting in Cincinnati, on February 28, was continued during the month of April, provided that in no event shall any highwines be shipped on commission to another market; provided further, that the association shall pay only the expense of converting the same into alcohol and the necessary freight; the alcohol to be disposed of by the various distillers who have a jobbing trade, but in case of a refusal to so take care of it, the parties converting the same into alcohol shall be kept harmless.

"*Resolved*, That when the treasurer ascertains the amount due each distiller up to April 1, after charging each with the $3 per bushel assessment and all other unpaid assessments, crediting all bills for export, capacity, or overassessment, he shall, as rapidly as he collects money, pay in installments of 25 per cent. to all creditors of the association, except where such claims are specially preferred claims, and that Messrs. Stevens, Dair & Co.'s claim be included under the same rule, except that their claim may be reduced so far as they assume the claim of $3 per bushel against any distillers who may not have credits to reduce such claim."

"Whereas the Western Export Association expires by limitation on the 1st day of May, 1882, but may be extended for one month by a unanimous vote of the executive committee; therefore,

"*Resolved*, That we deem it unwise to take action at this time, as exigencies may arise before the 1st day of May by which it might be prudent to continue the same another month."

All the above resolutions were passed by a unanimous vote.

H. B. MILLER, *President.*

Q. That order was made by the excutive committee.—A. That is ordered by the executive committee.

Q. And the names of the executive committee are here?—A. Yes, sir.

Q. Mr. H. B. Miller (yourself), Treasurer Hobart, and Messrs. Abel, Gaff, Stevens, Beggs, Bevis, Clark, and Woolner, as proxy for Mr. Bell. Those were the gentlemen who were present?—A. Yes, sir; Abel is from Chicago, Gaff and Stevens of Cincinnati, Beggs of Shelbyville, Bevis of Saint Louis, Clark and Woolner of Peoria.

Q. I want to get at the mode of doing this now. You say, to use your own language, "I make the assessment." Now, what I want to know is, whether there is a general authority given you by the executive committee, or by the association, to make such assessments as in your judgment are necessary for the protection or good of the association?—A. The executive committee orders the amount to be assessed, and then I compute it and get it printed and send it out.

Q. By what authority does the executive committee make these assessments? By authority of the association?—A. Yes, sir.

Q. In other words, where does this power come from, and how is it

delegated?—A. It comes from the association, and is delegated to the executive committee.

I have here the proceedings of the distillers' meeting held in Chicago, on Thursday, November 17, 1881, and would call attention to sections 4 and 5, in answer to your question.

The proceedings are as follows:

*Proceedings of the distillers' meeting, held in Chicago, on Thursday, November 17, 1881.*

DISTILLERS' MEETING.

Pursuant to call, the distillers engaged in the pro duction of highwines, spirits, and alcohol, met in convention at the Grand Pacific Hotel, in Chicago, on the 17th day of November, 1881.

PHILIP ZELL, of Peoria, was called to the chair, and EDWIN STEVENS, of Cincinnati, elected secretary.

H. B. Miller, esq., being called upon, stated the object of the meeting, and presented the following agreement, which, being approved, was signed by the following individuals, firms, and associations:

SECTION 1. The basis of operating distilleries shall be strict half capacity.

(NOTE.—In computing half capacity, no distiller shall be allowed in any event more than one-half government capacity, with the exception as below noted. He shall not be allowed to make more than three mashes a day, even if he cannot mash a fraction of one-half government capacity; and no distiller will be deprived of less than two mashes, whatever his capacity may be. Where this rule should work manifest injustice, the president of the association may grant relief.)

SEC. 2. Any distiller may mash in excess of one-half capacity sufficient to feed the stock now in stalls, by giving notice to the president of the association of the number of bushels he wishes to mash in excess, but for all such excess of capacity he shall pay into a common fund five cents, or as the executive committee at any time may determine, for every bushel of grain mashed in excess daily, for the use and benefit of those belonging to it. He may, however, at any time, discontinue the excess of capacity, by giving notice to the president of the association.

SEC. 3. Distillers mashing less than one-half capacity shall receive out of the pool five cents for every bushel mashed less than one-half capacity daily, on presenting evidence from the local collector as to the amount of grain he mashed.

SEC. 4. For the purpose of assisting the exportation of spirits, thus getting the surplus production out of the country, relieving the domestic market, and enabling us to maintain prices, an assessment of ——— cents be levied and payable on every bushel of grain mashed daily, to be paid into the common fund; and all moneys in the common fund not otherwise needed, shall be expended as follows:

SEC. 5. A bonus of ——— cents, as to the amount of money in the common fund, is to be paid to the exporter for every wine gallon of alcohol, of not less than 187 per cent. proof, exported, on vouchers being furnished, certified to by the local collector, that such goods have been regularly bonded in his office for export.

SEC. 6. All moneys contemplated under the above sections are due and payable in advance, on or before the fifth day of the month.

SEC. 7. The officers of the association, to carry the above into practical effect, shall consist of a president, treasurer, and an executive committee of seven members, who shall make all needful rules and regulations not inconsistent with the above. The executive committee shall fix the salaries of the officers; they shall from time to time, as the exigencies may demand, fix the amount of the assessments in accordance with section 4; they shall fix the amount of bonus, in accordance with section 5, to be paid the exporter; they shall have the power to dissolve the association for the following causes: A neglect or refusal of members in paying the monthly dues; after a trial of thirty days they should find the association a failure; on a petition of one-third the capacity in the association, they shall dissolve it at the end of the month. They shall audit the accounts of the treasurer, and be allowed all necessary expenses when on duty.

Distillers, creditors of the association, may receipt for all or such portion as may cancel their indebtedness to the association.

Any member may withdraw from the association by giving sixty days' notice to the president of the same.

This association shall enter into actual existence on the 21st day of November, 1881, and if not sooner dissolved, remain in force until May 1, 1882, but the executive committee may extend the time one month by a unanimous vote of all the members.

H. H. Shufeldt & Co., Chicago.

Empire Distilling Company, Chicago.

Phœnix Distilling Company, Chicago.
Chicago Distilling Company, Chicago.
Riverdale Distilling Company, Chicago.
Garden City Distilling Company, Chicago.
United States Distilling Company, Chicago.
John S. Miller & Co., Sterling, Ill.
Great Western Distilling Company, Peoria.
Monarch Distilling Company, Peoria.
Zell, Swabacher & Co., Peoria.
Spurk & Francis, Peoria.
C. S. Clarke & Co., Peoria
Woolner Brothers, Peoria.
G. T. Barker & Co., Peoria.
Bush & Brown, Peoria.
J. W. Johnson, Peoria.
Oscar Furst, Peoria.
Riverton Alcohol Works, Riverton.
Crown Distilling Company, Pekin.
Hamburg Distilling Company, Pekin.
Fairbanks & Duenwig, Terre Haute.
Saint Louis Distilling Company, Saint Louis.
Teuscher Distilling Company, Saint Louis.
Iowa City Alcohol Work, Iowa City.
The Mill Creek Distillery Company, Cincinnati.
Walsh & Kellogg, Cincinnati and Lawrenceburg.
Fleischman & Co., Cincinnati.
E. Arlett, Cincinnati.
G. H. Rabe, Cincinnati.
Gerke & Lippleman, Cincinnati.
Teepen & Davis, Cincinnati.
Caleb Dodsworth, Cincinnati.
Maddux, Hobart & Co., Cincinnati.
A. H. Smith, Cincinnati.
G. W. Robson & Co., Cincinnati.
G. Holterhoff, Cincinnati.
Frieberg & Workham, Cincinnati.
Dorsel & Wolftang, Covington.
Dair Brothers, Harrison, Ind.
T. & J. W. Gaff, Aurora, Ind.
W. H. Baker's Sons, Indianapolis.
Kuhlman & Teepen, Brookville.
George Davis & Co., Portsmouth.
Pattison & Caldwell, Hamilton, Ohio.
C. I. Pfeffer, Lebanon, Ill.
Kansas City Distilling Company, Kansas City.
Atlas Distilling Company, Des Moines.
John Beggs, Shelbyville, Ind.

On motion of W. N. Hobart, it was resolved that the capacities of the distillers, so far as reported by H. B. Miller as agreed capacities, are hereby accepted as satisfactory.

It was also resolved that the Chicago capacities, as reported to the meeting, be accepted with the three mash clause.

Resolution offered by Mr. C. S. Clarke, that the executive committee, when appointed, determine all capacities not already fixed.

Moved by Mr. Hobart, and adopted, that no distiller shall be a member of the association until his signature is affixed to a copy of the agreement, or until he has signified his assent by telegraph or letter. Mr. Abel moved that we now take a recess until 2 o'clock p. m. Adopted.

Convention reconvened.

*Resolved*, That the executive committee, hereafter to be appointed, shall have the right to decide what general assessment shall be made on distillers, and this assessment shall be made on all capacity run, and, in addition to this, five cents per bushel daily shall be paid on all capacity over fifty per cent. allotted any distiller.

Moved by C. S. Clarke, and adopted, that no assessment be levied except for the purpose of exporting alcohol, for paying for capacity operated less than 50 per cent., and paying the ordinary expenses of the association.

On motion of George. T. Burroughs, it was resolved that the executive committee be authorized, on the 10th and 25th days of each month, to fix an amount per gallon to be paid per wine gallon on all alcohol exported for two weeks each, commencing on the first and fifteenth of the month, the basis to be made on the day the price is fixed and each member of the association be notified.

W. N. Hobart, of Cincinnati, offered the following:

*Resolved*, That the president, treasurer, and seven additional members of the association, shall constitute the executive committee, to be elected by the association, who shall hold their offices until the 1st day of June next, unless the association shall be sooner dissolved.

Upon the president shall devolve the general arrangement of all details connected with the general management of the association. He shall ascertain from reliable sources or persona lvisits the actual capacity to which each distiller, where capacity has not already been agreed upon by the association, is entitled. It shall be his duty to report to the different members of the executive committee, at any time, anything requiring their action, and to obtain their decision in writing when a meeting is not practicable. His decision on any subject submitted to him shall always be open for revision by the executive committee, either on request by a member of the committee, or by the party whom his decision affects. All reports made by distillers must be certified to by the proper government officer. It shall be his duty to keep all records of the actions of the executive committee, all correspondence referred to him by the committee, and the accounts with each member of the association who will have to pay into the fund or be paid from it.

The treasurer shall collect from all members of the association whatever may be due to it, and shall, upon the order of the president, pay out any sums which may become due under the provisions of the contract, or for such expenses as the executive committee may approve. He shall report fully his receipts and disbursements, when ordered by the executive committee, and make a full report once a month.

The approval of five members of the executive committee shall be required to pass on any subject brought before it, and this approval may be obtained either by correspondence or by a meeting. They shall decide what amount shall be paid the foregoing officers for their services, and shall be paid their own necessary expenses.

H. B. Miller moved that so much of the above resolution as referred to the president and treasurer being members of the executive committee, be reconsidered. Adopted.

It was resolved that the executive committee shall have the power to make any arrangement which may be more economical than to pay the bonus for export alcohol, and produce the same effect.

On motion of C. S. Clarke, all expenses incurred by H. B. Miller in getting up the association were ordered paid.

Moved by H. B. Miller, and adopted, that according to the capacities of the different districts, the executive committee be apportioned as follows: Three from Illinois, two from Ohio, one from Indiana, and one from the territory west of the Mississippi River, and that the delegates from each district shall elect their own committeemen.

The association then proceeded with the election of officers, with the following result, Paul Mohr and A. Bevis being tellers:

*President*—H. B. Miller, Riverton, Ill.

*Treasurer*—W. N. Hobart, Cincinnati, Ohio.

*Executive Committee*—Jonathan Abel, Chicago; Philip Zell and Charles S. Clarke, Peoria; C. H. Kellogg and Edwin Stevens, Cincinnati; John Beggs, Shelbyville, Ind.; and A. Bevis, Saint Louis, Mo.

On motion of H. H. Shufeldt, the association was named "The Western Export Association."

It was then moved by H. B. Miller that the articles of the association take effect and be in full force from and after the 21st day of November, 1881.

The thanks of the association were then tendered unanimously to H. B. Miller for his faithful work in perfecting said association. Also to Mr. Pratt, for his advocacy of the same in his excellent journal.

On motion, the convention adjourned *sine die*.

### EXECUTIVE COMMITTEE.

Immediately after the adjournment the executive committee convened:

Present—Abel, Zell, Clarke, Beggs, Bevis, Stevens and Walsh, who acted by unanimous consent for Mr Kellogg.

The blank in section 4 was filled with one cent until January 1.

The blank in section 5 was filled with seven cents until December 15.

Charles H. Kellogg, for special reasons having declined to serve on the executive committee, T. T. Gaff, esq., was unanimously chosen to fill the vacancy.

Adjourned.

These powers are given to the executive committee by the distillers represented west and north of the Ohio River, and among the powers delegated was the power to make these assessments.

Q. Have all these monthly assessments been made by special order

of the committee, and did the committee fix in advance so much for each month?—A. We had an executive committee meeting once a month.

Q. And they fixed the amount from their best judgment as to what would be wanted?—A. Yes, sir. The treasurer gave a report each month as to how his books stood, and we made these assessments. It was a much greater thing than we supposed. We commenced with one cent, then went to ten, then to fifteen. The reason of those heavy assessments was that our business was very much injured by the tax agitation in Congress here.

Q. Please state how that was.—A. Well, jobbers would buy only from hand to mouth. They are in the habit of buying in tolerably large quantities where they have any stores, because it improves while it lies there. A man who used to buy fifty barrels at a time would buy only ten barels.

Q. Do your goods improve by age?—A. No, sir; our goods do not improve by age. They are just as good the day they are made as they are ten years afterwards. Alcohol is not improved in age nor raw high wines. We have got a process now by which we refine our goods. We leach them carefully through charcoal, and we distill them and make what they call a cologne, or French spirit. A pure French spirit is a proof spirit, and a cologne spirit is a stronger spirit, about 187 per cent. proof. We divest it of almost all odors. It is colorless and odorless, and that is the basis for making gin, brandies, whiskies, and almost everything else.

Q. I want to come back to that in a moment. Before we leave the other branch of the subject, however, let us get these papers arranged. Now, you have given me here the assessments for January, February, and March, and the last assessment, as you call it, May 12, 1882. I think they are all here, then, except the April assessment?—A. All but the April assessment. I will send you that immediately.

ASSESSMENT FOR JANUARY.

The executive committee shall fix the salaries of the officers; they shall, from time to time, as the exigencies may demand, fix the amount of the assessments in accordance with section 4; they shall fix the amount of bonus, in accordance with section 5, to be paid the exporter; they shall have the power to dissolve the association for the following causes: *A neglect or refusal of members in paying the monthly dues;* after a trial of thirty days, they should find the association a failure; on a petition of one-third the capacity in the association, they shall dissolve it at the end of the month.—*Extract from agreement.*

At a meeting of the executive committee, held in Cincinnati on December 8, all being present, it was unanimously resolved that the assessment for January shall be *four* cents per bushel mashed. At a meeting of the same committee, held in Chicago on December 22, an additional *one cent* was voted to cover deficiencies for December.

The following is a correct statement of each member, their *half capacity*, their extra capacity, and the assessment against each one.

| Names of distillers. | One-half capacity. | Extra capacity. | Number of bushels operated. | Amount of assessment. |
|---|---|---|---|---|
| Garden City Distilling Company | 1,045 | ..... | 795 | $1,033 50 |
| Empire Distilling Company | 898 | ..... | 583 | 817 90 |
| Chicago Distilling Company | 1,000 | ..... | 1,000 | 1,300 00 |
| Riverdale Distilling Company | 1,175 | 229 | 1,404 | 2,122 80 |
| Phœnix Distilling Company | 1,020 | 200 | 1,220 | 1,820 00 |
| H. H. Shufeldt & Co | 1,718 | 82 | 1,800 | 2,446 60 |
| United States Distilling Company | 892 | ..... | 650 | 845 00 |

| Names of distillers. | One-half capacity. | Extra capacity. | Number of bushels operated. | Amount of assessment. |
|---|---|---|---|---|
| Sponk & Francis | 1,200 | ..... | 1,200 | $1,560 00 |
| G. T. Barker | 1,204 | ..... | 1,204 | 1,565 20 |
| Zell, Swahacher & Co | 1,500 | 500 | 2,000 | 3,250 00 |
| Oscar Fursh | 460 | 306 | 766 | 1,393 60 |
| Woolner Brothers | 1,100 | 160 | 1,260 | 1,846 00 |
| Monarch Distilling Company | 2,500 | 833 | 3,333 | 5,415 80 |
| | | | 17,215 | |
| J. W. Johnson | 900 | ..... | 900 | 1,170 00 |
| C. S. Clarke & Co | 700 | 300 | 1,000 | 1,690 00 |
| Bush & Brown | 484 | 240 | 724 | 1,253 20 |
| Great Western Distilling Company | 2,556 | ..... | 2,556 | 3,322 80 |
| Riverton Alcohol Works | 1,120 | *160 | 1,289 | 1,872 00 |
| Crown Distilling Company | 609 | ..... | 609 | 791 70 |
| Hamling Distilling Company | 924 | 156 | 1,070 | 1,593 80 |
| John S. Miller & Co | 1,068 | ..... | 1,068 | 1,389 40 |
| Kuhlman & Teepen | 200 | ..... | 200 | 260 00 |
| Dair Brothers | 400 | 200 | 600 | 1,040 00 |
| Fairbanks & Duenweg | 1,800 | ..... | 1,347 | 1,751 10 |
| Baker's Sons | 400 | ..... | 384 | 499 20 |
| John G. Homstein | 500 | ..... | 250 | 325 00 |
| John Beggs | 750 | ..... | 600 | 780 00 |
| | | | 12,597 | |
| Dorsel & Walftang | 525 | ..... | ..... | 682 50 |
| G. W. Robson, jr., & Co | 864 | ..... | ..... | 1,123 20 |
| George Holterhoff | 600 | ..... | ..... | 780 00 |
| Freiberg & Workum | 500 | ..... | ..... | 650 00 |
| Caleb Dodsworth | 666 | ..... | 600 | 780 00 |
| G. H. Rabe | 450 | 150 | 600 | 975 00 |
| E. Arlett | 300 | ..... | 300 | 390 00 |
| A. H. Smith | 800 | 100 | 900 | 1,300 00 |
| Maddux, Hobart & Co | 750 | 450 | 1,200 | 2,145 00 |
| Mill Creek Distilling Company | 2,000 | ..... | 2,000 | 2,600 00 |
| Walsh & Kellogg | 2,300 | 1.200 | 3,500 | 6,100 00 |
| Davis & Teepen | 550 | 300 | 850 | 1,495 00 |
| Gherke & Lippleman | 540 | *246 | 786 | 1,341 60 |
| Fleishman & Co | 1,100 | 200 | 1,300 | 1,950 00 |
| | | | 12,036 | |
| Pattison & Caldwell | 720 | 120 | 840 | 1,248 00 |
| George Davis & Co | 900 | ..... | 900 | 1,170 00 |
| James Emmitt | 600 | ..... | 600 | 780 00 |
| Saint Louis Distilling Company | 917 | 155 | 1,072 | 1,595 10 |
| Tenscher Distilling Company | 1,150 | ..... | 940 | 1,222 00 |
| Atlas Distilling Company | 624 | 485 | 1,109 | 2,072 20 |
| Kansas City Distilling Company | 634 | ..... | 634 | 824 20 |
| Iowa City Alcohol Works | 600 | ..... | 200 | 260 00 |
| C. I. Pfeffer | 200 | ..... | 200 | 260 00 |
| Willow Springs Distilling Company | 660 | 540 | 1,200 | 2,262 00 |
| Lithia Springs Distilling Company | 350 | 150 | 500 | 845 00 |
| Iowa Distilling Company | ..... | ..... | 500 | ..... |
| | | | 8,695 | 50,543 00 |

*A portion of January only. While the assessments look large, every dollar will be needed to get the surplus out of the country. We have a deficiency of some $13,000 for December. The assessments equal about 1½ cents per gallon. With wines at $1.16, it still nets the distiller $1,14½. The surplus must be got out of the country by export, and exports net the distiller equal to $1.07, without bonus. Without bonus, this would, therefore, be the price of goods; so, by paying these assessments, we are still net gainers of 7½ cents a proof gallon. Distillers who are exporting will send in their certificates, and they will be paid in the turn they are received.

15½ quarts—made 5,092.256—would make 4,231,500—difference, 860.756.

## ASSESSMENT FOR FEBRUARY.

The executive committee shall fix the salaries of the officers; they shall, from time to time, as the exigencies may demand, fix the amount of the assessments in accordance with section 4; they shall fix the amount of bonus, in accordance with section 5, to be paid the exporter; they shall have the power to dissolve the association for the following causes: *A neglect or refusal of members in paying the monthly dues;* after a trial of thirty days they should find the association a failure; on a petition of one-third the capacity in the association, they shall dissolve it at the end of the month.—*Extract from agreement.*

At a meeting of the executive committee held in Cincinnati on Wednesday, January 11, 1882, the following resolution was unanimously adopted:

*Resolved*, That it is the opinion of this meeting that the treasurer should have sufficient funds on hand at all times to pay claims on presentation, and to accomplish this, the price of high wines be at once advanced to $1.16, and advanced as fast as safety and prudence will dictate up to $1.18, and that the assessment for February be large enough beyond peradventure to pay running claims, and liquidate the deficiency, whatever it may be.

In accordance with the above, the executive committee have unanimously decided to make the assessment for Febuary ten cents a bushel daily, the price on high wines $1.17 from February 1, and the bonus on export alcohol the same as follows:

| Names of distillers. | One-half capacity. | Extra capacity. | Number of bushels operated. | Amount of assessment. |
|---|---|---|---|---|
| Garden City Distilling Company | 1,045 | ..... | 795 | $1,908 00 |
| Empire Distilling Company | 898 | ..... | 583 | 1,399 20 |
| Chicago Distilling Company | 1,000 | ..... | 1,000 | 2,400 00 |
| Riverdale Distilling Company | 1,175 | 229 | 1,404 | 3,644 40 |
| Phœnix Distilling Company | 1,020 | 200 | 1,220 | 3,168 00 |
| H. H. Shufeldt & Co | 1,718 | 82 | 1,800 | 4,418 40 |
| United States Distilling Company | 892 | ..... | 650 | 1,560 00 |
| Spurk & Francis | 1,200 | ..... | 1,200 | 2,880 00 |
| G. T. Barker | 1,204 | ..... | 1,204 | 2,889 60 |
| Zell, Swabacher & Co | 1,500 | 500 | 2,000 | 5,400 00 |
| Oscar Furst | 460 | 306 | 766 | 2,205 60 |
| Woolner Bros | 1,100 | 160 | 1,260 | 3,216 00 |
| Monarch Distilling Company | 2,500 | 833 | 3,333 | 8,998 80 |
| | | | 17,215 | |
| J. W. Johnson | 900 | ..... | 900 | 2,160 00 |
| C. S. Clarke & Co | 700 | 300 | 1,000 | 2,760 00 |
| Bush & Brown | 484 | 240 | 724 | 2,025 60 |
| Great Western Distilling Company | 2,556 | ..... | 2,556 | 6,134 40 |
| Riverton Alcohol Works | 1,120 | ..... | 1,120 | 2,688 00 |
| Crown Distilling Company | 609 | ..... | 609 | 1,461 60 |
| Hamburg Distilling Company | 924 | 156 | 1,070 | 2,735 20 |
| Jno. S. Miller & Co | 1,068 | ..... | 1,068 | 2,563 20 |
| Kuhlman & Teepen | 200 | ..... | ..... | ..... |
| Dair Bros | 400 | 185 | 585 | 1,626 00 |
| Fairbanks & Duenweg | 1,800 | ..... | 1,347 | 3,232 80 |
| Baker's Sons | 400 | ..... | 384 | 921 60 |
| Jno. G. Hornstein | 500 | ..... | 250 | 600 00 |
| Jno. Beggs | 750 | ..... | 600 | 1,440 00 |
| | | | 12,213 | |
| Dorsel & Wolftang | 525 | ..... | ..... | 1,260 00 |
| G. W. Robson, jr., & Co | 864 | ..... | ..... | 1,440 00 |
| Geo. Holterhoff | 600 | ..... | ..... | 1,440 00 |
| Freiberg & Workum | 500 | ..... | ..... | 1,200 00 |
| Caleb Dodsworth | 666 | ..... | 600 | 1,440 00 |
| G. H. Rabe | 450 | ..... | 450 | 1,080 00 |
| E. Arleth | 300 | ..... | 200 | 480 00 |
| A. H. Smith | 800 | ..... | 800 | 1,920 00 |
| Maddux, Hobart & Co | 750 | 450 | 1,200 | 3,420 00 |
| Mill Creek Distilling Company | 2,000 | ..... | 2,000 | 4,800 00 |
| Walsh & Kellogg | 2,300 | 1,200 | 3,500 | 9,840 00 |
| Davis & Teepen | 550 | 165 | 715 | 1,914 00 |
| Gherke & Lippleman | 540 | ..... | 540 | 1,296 00 |
| Fleishman & Co | 1,100 | 200 | 1,300 | 3,360 00 |
| | | | 11,305 | |
| Pattison and Caldwell | 720 | 120 | 840 | 2,160 00 |
| Geo. Davis & Co | 900 | ..... | 900 | 2,160 00 |
| James Emmitt | 600 | ..... | 600 | 1,440 00 |
| Saint Louis Distilling Company | 917 | ..... | 917 | 2,200 80 |
| Teuscher Distilling Company | 1,150 | ..... | 940 | 3,256 00 |
| Atlas Distilling Company | 624 | 485 | 1,109 | 3,243 60 |
| Kansas City Distilling Company | 634 | ..... | 634 | 1,521 60 |
| Iowa City Alcohol Works | 600 | ..... | 200 | 480 00 |
| C. I. Pfeffer | 200 | ..... | 200 | 480 00 |
| Willow Springs Distilling Company | 800 | 400 | 1,200 | 3,360 00 |
| Lithia Springs Distilling Company | 350 | 150 | 500 | 1,380 00 |
| Iowa Distilling Company | 500 | ..... | 500 | 1,200 00 |
| | | | 8,540 | |

| Name of distillers. | One-half capacity. | Extra capacity. | Number of bushels operated. | Amount of assessment. |
|---|---|---|---|---|
| Scofield and Tiers | 1,000 | ..... | ..... | $1,500 00 |
| California Distilling Company | 600 | ..... | ..... | 1,440 00 |
| Pacific Distilling Company | 600 | ..... | ..... | 1,440 00 |
| | | | | 49,273 00 |

15½ quarts made 4. 582. 368—would make 3. 906. 000—difference 686. 368.

The treasurer will in a few days send you his report, giving names and amounts for every dollar paid out. The exportation of spirits is fearfully large, showing *a vast overproduction*, which every one is helping to make, but this exportation, though expensive, is the grand safety-valve by which we get rid of our goods, and so are enabled to maintain prices. On February 4, 1881, the distillers were in tribulation—prices of goods had sunk below the manufacturing cost, and a meeting on that day was held in Peoria to devise means to prevent these losses. This year we are better off, and notwithstanding the heavy assessments, every distiller has been enabled to make a little money. If the committee is not disappointed in the exports for February, this assessment will he heavy enough to pay promptly all running claims and the indebtedness standing against us, so that while we shall maintain the same or higher prices to the end, the assessments in the future will never again be as heavy.

H. B. MILLER,
*President.*

NET GAIN THROUGH THE WESTERN EXPORT ASSOCIATION.

When the Western Export Association was called into existence, high wines were selling in Cincinnati at *one dollar and eight cents* a gallon. The Cincinnati high-wine market, to a certain extent, is the basis on which all goods made in the Western States are sold. As this association has been compelled to export, since the existence of the same to February 1, nearly two million gallons of proof spirits to maintain even a small profit, it is evident that had this amount of spirits been pressed on the domestic market, there was no possibility of an advance, but a great probability of a further decline. The difference between the price at the organization of our association and the price since received is fully *seven cents* a gallon, and I give below a table of the net *gain* (not profit) by each distiller from the 21st day of November to the 1st day of February, sixty-two days, *over and above all assessments* and expenses in consequence of the association. When the assessments look large, examine this table with the certain knowledge that in case of a dissolution of the same, with the vast overproduction going on, spirits would decline at once to the base of exports, or $1.07. You will readily see the benefit of the same, notwithstanding the heavy assessments, which are no larger than is absolutely necessary to get the surplus product out of the country. This table is predicated on a yield of 15¼ quarts.

| | |
|---|---|
| Garden City Distilling Company, Chicago, Ill | $16,157 30 |
| Empire Distilling Company, Chicago, Ill | 13,953 34 |
| Chicago Distilling Company, Chicago, Ill | 15,194 52 |
| Riverdale Distilling Company, Chicago, Ill | 20,569 04 |
| Phoenix Distilling Company, Chicago, Ill | 17,995 80 |
| H. H. Shufeldt & Co., Chicago, Ill | 27,029 30 |
| United States Distilling Company, Chicago, Ill | 13,832 92 |
| Spurk & Francis, Peoria, Ill | 18,189 00 |
| G. T. Barker, Peoria, Ill | 18,200 00 |
| Zell, Swabacher & Co., Peoria, Ill | 28,765 00 |
| Oscar Furst, Peoria, Ill | 9,489 26 |
| Woolner Bros. Peoria, Ill | 18,604 62 |
| Monarch Distilling Company, Peoria, Ill | 48,087 92 |
| J. W. Johnson, Peoria, Ill | 13,643 92 |
| C. S. Clarke & Co., Peoria, Ill | 14,227 50 |
| Bush & Brown, Peoria, Ill | 10,227 86 |
| Great Western Distilling Company, Peoria, Ill | 38,825 20 |
| Riverton Alcohol Works, Riverton, Ill | 18,806 20 |
| Crown Distilling Company Pekin, Ill | 9,304 88 |
| Hamburg Distilling Company, Pekin, Ill | 15,729 88 |
| John S. Miller & Co., Sterling, Ill | 16,185 00 |
| Kuhlman & Teepen, Brookville, Ind | 3,031 54 |
| Dair Bros., Harrison, Ohio | 8,474 50 |
| Fairbanks & Duenwig, Terre Haute, Ind | 28,037 01 |
| Baker's Sons, Indianapolis, Ind | 6,080 58 |

| | |
|---|---|
| John C. Hornstein, Canton, Ill | $5,026 12 |
| John Beggs, Shelbyville, Ind | 11,556 00 |
| Dorsel & Wolftang, Covington, Ky | 7,956 06 |
| G. W. Robson, jr., & Co., Cincinnati, Ohio | 13,330 44 |
| G. Holterhoff, Cincinnati, Ohio | 9,081 42 |
| Freiberg & Workum, Cincinnati, Ohio | 8,046 58 |
| Caleb Dodsworth, Cincinnati, Ohio | 9,888 00 |
| G. H. Rabe, Cincinnati, Ohio | 8,529 50 |
| E. Arleth, Cincinnati, Ohio | 4,545 08 |
| G. K. Duckworth, Cincinnati, Ohio | 14,365 50 |
| Maddux, Hobart & Co., Cincinnati, Ohio | 16,894 00 |
| Mill Creek Distilling Co., Cincinnati, Ohio | 36,178 00 |
| Walsh & Kellogg, Cincinnati, Ohio | 49,391 08 |
| Davis & Teepen, Cincinnati, Ohio | 11,999 22 |
| Gherke & Lippleman, Cincinnati, Ohio | 10,067 08 |
| Fleishman & Co., Cincinnati, Ohio | 19,082 58 |
| Patterson & Caldwell, Hamilton, Ohio | 12,366 30 |
| George Davis & Co., Portsmouth, Ohio | 14,748 08 |
| James Emmitt, Waverly, Ohio | 9,440 50 |
| Saint Louis Distilling Company, Saint Louis, Mo | 15,768 34 |
| Teuscher Distilling Company, Saint Louis, Mo | 17,778 64 |
| Atlas Distilling Company, Des Moines, Ia | 15,252 46 |
| Kansas City Distilling Company, Kansas City, Mo | 9,624 18 |
| Iowa City Alcohol Works, Iowa City, Iowa | 9,758 50 |
| C. I. Pfeffer, Lebanon, Ill | 3,031 50 |
| Willow Springs Distilling Company, Omaha, Nebr | 20,181 00 |
| Lithia Spring Distilling Company, Beardstown, Ill | 7,561 58 |

### ASSESSMENT FOR MARCH.

The executive committee shall fix the salaries of the officers; they shall, from time to time, as the exigencies may demand, fix the amount of the assessments in accordance with section 4; they shall fix the amount of bonus, in accordance with section 5, to be paid the exporter; they shall have the power to dissolve the association for the following causes: *A neglect or refusal of members in paying the monthly dues;* after a trial of thirty days, they should find the Association a failure; on a petition of one-third the capacity in the association, they shall dissolve it at the end of the month.—*Extract from agreement.*

At a meeting of the executive committee of the Western Export Association, held in Chicago on February 24, and adjourned to Cincinnati to the 28th day of the same month, it was unanimously resolved, all the members of the committee being present, to make the assessment for March 15 cents per bushel daily on all capacity mashed, 10 cents of the same with the extra capacity payable on or before the 5th day of March, and the balance of 5 cents a bushel on or before the 20th day of the same month. Below will be found the amounts due, and members will please remit without having formal bills sent to them.

The price of high wines will be maintained at $1.16, and the bonus on exports 20 cents a wine gallon for the first half of March.

As it was impossible for your president to know just how many bushels each house would operate, if any are overassessed, the treasurer is empowered to rectify the same.

| Names of distillers. | One-half capacity. | Extra capacity. | Total bushels operated. | Amount payable March 5. | Amount payable March 20. |
|---|---|---|---|---|---|
| Carden City Distilling Company | 1,045 | ..... | 795 | $2,146 50 | $1,073 25 |
| Empire Distilling Company | 898 | ..... | 883 | 1,574 10 | 787 65 |
| Chicago Distilling Company | 1,000 | ..... | 1,000 | 2,700 00 | 1,350 00 |
| Riverdale Distilling Company | 1,175 | 229 | 1,404 | 4,099 95 | 1,895 40 |
| Phœnix Distilling Company | 1,020 | ..... | 1,020 | 2,754 00 | 1,377 00 |
| H. H. Shufeldt & Co | 1,718 | 82 | 1,800 | 4,970 70 | 2,430 00 |
| United States Distilling Company | 892 | ..... | 650 | 1,655 00 | 877 50 |
| Spurk & Francis | 1,200 | ..... | 1,200 | 3,240 00 | 1,620 00 |
| G. D. Barker | 1,204 | ..... | 1,204 | 4,250 80 | 1,625 40 |
| Zell, Swabacher & Co | 1,500 | 500 | 2,000 | 5,940 00 | 2,700 00 |
| Oscar Furst | 460 | 306 | 766 | 2,481 31 | 1,034 10 |
| Woolner Bros | 1,100 | 160 | 1,260 | 3,618 00 | 1,701 00 |
| Monarch Distilling Company | 2,500 | 833 | 3,333 | 10,123 65 | 4,499 55 |
| | | | 17,915 | | |

| Names of distillers. | One-half capacity. | Extra capacity. | Total bushels operated. | Amount payable March 5. | Amount payable March 20. |
|---|---|---|---|---|---|
| J. W. Johnson | 900 | ..... | 900 | $2,430 00 | $1,215 00 |
| C. J. Clark & Co | 700 | 300 | 1,000 | 3,105 00 | 1,350 00 |
| Bush & Brown | 484 | 240 | 724 | 2,278 80 | 977 40 |
| Great Western Distilling Company | 2,551 | ..... | 2,556 | 6,901 21 | 3,450 60 |
| Riverton Alcohol Works | 1,120 | ..... | 1,120 | 3,024 00 | 1,512 00 |
| Crown Distilling Company | 609 | ..... | 609 | 1,644 30 | 822 15 |
| Hamburg Distilling Company | 924 | 156 | 1,070 | 3,099 60 | 1,444 50 |
| John J. Miller & Co | 1,068 | ..... | 1,068 | 2,862 00 | 1,431 00 |
| Kuhlman & Teepen, closed down | 200 | ..... | ..... | ..... | ..... |
| Dair Brothers | 400 | 185 | 585 | 1,829 25 | 789 75 |
| Fairbanks & Duenweg | 1,800 | ..... | 1,347 | 3,636 90 | 1,818 45 |
| Baker Bros | 400 | ..... | 384 | 939 60 | 469 80 |
| John G. Hornstein | 500 | ..... | 250 | 675 00 | 337 50 |
| John Beggs | 750 | ..... | 600 | 1,620 00 | 810 00 |
| | | | 11,313 | | |
| Dorsel & Wolftange | 525 | ..... | ..... | 1,417 50 | 708 75 |
| Geo. W. Robson, jr., & Co | 864 | ..... | ..... | 1,620 00 | 810 00 |
| G. Holterhoff | 600 | ..... | ..... | 1,620 00 | 810 00 |
| Frieberg & Workum | 500 | ..... | ..... | 1,350 00 | 675 00 |
| C. Dodsworth | 666 | ..... | 600 | 1,620 00 | 810 00 |
| G. H. Rabe | 450 | ..... | 450 | 1,215 00 | 607 50 |
| E. Arleth, closed down | 300 | ..... | 200 | ..... | ..... |
| G. K. Duckworth, closed down | 800 | ..... | 800 | ..... | ..... |
| Maddux, Hobart & Co | 750 | 150 | 900 | 2,632 50 | 1,215 00 |
| Mill Creek Distilling Company | 2,000 | ..... | 1,600 | 4,320 00 | 2,160 00 |
| Walsh & Kellogg | 2,300 | 800 | 3,100 | 9,450 00 | 4,185 00 |
| Davis & Teepen | 550 | ..... | 550 | 2,153 25 | 965 25 |
| Gerke & Lippleman | 540 | ..... | 540 | 1,458 00 | 729 00 |
| Fleishman & Co | 1,100 | 200 | 1,300 | 3,780 00 | 1,755 00 |
| Pattison & Caldwell | 720 | 120 | 840 | 2,430 00 | 1,134 00 |
| | | | 10,880 | | |
| Geo. Davis & Co | 900 | ..... | 900 | 2,430 00 | 1,215 00 |
| James Emmitt | 600 | ..... | 600 | 1,620 00 | 810 00 |
| Saint Louis Distilling Company | 917 | ..... | 917 | 2,475 90 | 1,237 95 |
| Teuscher Distilling Company | 1,150 | ..... | 940 | 2,538 00 | 1,269 00 |
| Atlas Distilling Company | 624 | 1,109 | 1,109 | 3,649 05 | 1,497 15 |
| Kansas Distilling Company | 634 | ..... | 634 | 1,711 80 | 855 90 |
| Iowa City Alcohol Works | 600 | ..... | 200 | 540 00 | 270 00 |
| C. I. Pfeffer | 200 | ..... | 200 | 540 00 | 270 00 |
| Willow Springs Distilling Company | 900 | 300 | 1,200 | 3,645 00 | 1,620 00 |
| Lythia Springs Distilling Company | 350 | 150 | 500 | 1,552 50 | 675 00 |
| Iowa Distilling Company | 500 | ..... | 500 | 1,350 00 | 675 00 |
| Scofield & Tevis | 1,000 | ..... | ..... | 2,700 00 | 1,350 00 |
| California Distilling Company | 600 | ..... | ..... | 1,620 00 | 810 00 |
| Pacific Distilling Company | 600 | ..... | ..... | 1,620 00 | 810 00 |
| | | | 7,700 | | 47,808 00 |

GENTLEMEN OF THE ASSOCIATION: Above you will please find the assessment for March, for which your officers and executive committee have no apology to make. Your executive committee was in session two days, canvassing every proposition carefully and thoughtfully, even to the end of levying an assessment to pay our present indebtedness, and dissolving the association. In such an event there were no two opinions, that the price of high wines would at once recede to $1.05, and by maintaining the price at $1.16, and paying an assessment of fifteen cents a bushel during March, the members are still the gainers by *seven cents* a proof gallon. The necessity for such heavy assessments can be accounted for in a few words: "*The demoralization of the domestic trade by the tax agitation in Congress.*" This has necessitated the exportation of double the amount of goods, and has entailed double the expense on the association. In a few days nearly every bushel of extra capacity will be cut off, and the actual mashing decreased at once 5,000 bushels daily. This decrease will continue to the end of our association.

We cannot tell what the needs of our trade may require in the future, but if all keep good faith now, it will be no hard matter to provide hereafter for any contingency that *necessity might require.*

H. B. MILLER,
*President.*

## WESTERN EXPORT ASSOCIATION.

*The last assessment.*

CINCINNATI, *May* 12, 1882.

The following assessment is made in accordance with a resolution passed by the executive committee, in a meeting held in Cincinnati, on May 12, 1882, which reads as follows: "Resolved, that the officers of the association make an assessment at once large enough to liquidate our indebtedness, and that no action be taken looking to the formation of another association until the affairs of the present one are honorably wound up."

In view of the treasurer's statement that the existing debts, after deducting the cash on hand and the outstanding accounts which are considered collectible, are about $19,000 for liabilities contracted prior to April 1, and about $22,000 for April debts, which the 10 cent assessment would not meet, the assessment for deficiency on April 1 should have been $3.40 per bushel instead of $3, and for April 12½ cents per bushel, instead of 10 cents. Each house has been therefore assessed 40 cents per bushel on the same average basis as the $3 assessment, and the 2½ cents per bushel on grain actually mashed in April.

| Names of distillers. | One-half capacity. | Average daily mashing to March 31. | Assessment of 40 cents a bushel one day to pay March indebtedness. | Assessment of 2½ cents a bushel during April to pay April indebtedness. | Total amount of assessment. |
|---|---|---|---|---|---|
| Garden City Distilling Company | 1,045 | 800 | $320 00 | $494 30 | $814 30 |
| Empire Distilling Company | 898 | 634 | 253 60 | 184 30 | 437 90 |
| Chicago Distilling Company | 1,000 | 965 | 386 00 | 500 00 | 886 00 |
| Riverdale Distilling Company | 1,175 | 1,404 | 561 60 | 877 50 | 1,439 10 |
| Phœnix Distilling Company | 1,020 | 1,171 | 468 41 | 550 00 | 1,018 41 |
| H. H. Shufeldt & Co | 1,718 | 1,800 | 720 00 | 1,125 00 | 1,845 00 |
| United States Distilling Company | 892 | 675 | 270 00 | 406 20 | 676 20 |
| Spurk & Francis | 1,200 | 1,200 | 480 00 | 750 00 | 1,230 00 |
| G. T. Barker | 1,204 | 1,200 | 480 00 | 752 50 | 1,232 50 |
| Zell, Swabacher & Co | 1,500 | 1,880 | 752 00 | 841 25 | 1,593 25 |
| Oscar Furst | 460 | 741 | 296 40 | 103 50 | 399 90 |
| Woolner Bros | 1,100 | 1,200 | 480 00 | 687 50 | 1,167 50 |
| Monarch Distilling Company | 2,500 | 3,333 | 1,333 20 | 1,812 32 | 3,145 52 |
| J. W. Johnson | 900 | 900 | 360 00 | 180 00 | 540 00 |
| C. S. Clark & Co | 700 | 942 | 376 80 | 417 50 | 794 30 |
| Bush & Brown | 484 | 663 | 265 20 | 302 50 | 567 70 |
| Great Western Distilling Company | 2,556 | 2,556 | 1,022 40 | 1,572 50 | 2,594 90 |
| Riverton Alcohol Works | 1,120 | 1,144 | 457 60 | 548 10 | 1,005 70 |
| Crown Distilling Company | 609 | 609 | 243 60 | 371 75 | 615 35 |
| Hamburg Distilling Company | 924 | 1,000 | 400 00 | 577 50 | 977 50 |
| Jno. S. Miller & Co | 1,068 | 1,080 | 432 00 | 667 50 | 1,099 50 |
| Kuhlman & Teepen | 200 | 120 | 48 00 | ..... | 48 00 |
| Dair Bros | 400 | 564 | 225 48 | 243 75 | 469 23 |
| Fairbanks & Duenweg | 1,800 | 1,347 | 538 80 | 753 90 | 1,292 70 |
| W. H. Baker's Sons | 400 | 384 | 153 60 | 129 60 | 283 20 |
| John G. Hornstein | 500 | 250 | 100 00 | 62 50 | 162 50 |
| Jno. Beggs | 750 | 636 | 245 33 | 222 50 | 467 83 |
| Dorsel & Wolftang | 525 | 290 | 116 00 | ..... | 116 00 |
| G. W. Robson, jr., & Co | 864 | 300 | 120 00 | 187 50 | 307 50 |
| G. Holterhoff | 600 | 300 | 120 00 | 125 00 | 245 00 |
| Freiberg & Workum | 500 | 300 | 120 00 | 300 00 | 420 00 |
| Caleb Dodsworth | 666 | 653 | 261 20 | 225 00 | 486 20 |
| G. H. Rabe | 450 | 532 | 212 80 | 125 00 | 337 80 |
| E. Arleth | 300 | 192 | 76 80 | ..... | 76 80 |
| Geo. K. Duckworth | 800 | 600 | 240 00 | ..... | 240 00 |
| Maddux, Hobart & Co | 750 | 985 | 394 80 | 375 00 | 769 80 |
| Mill Creek Distilling Company | 2,000 | 2,152 | 860 80 | 1,009 30 | 1,870 10 |
| Walsh & Kellogg | 2,300 | 3,270 | 1,308 00 | 1,937 50 | 3,245 45 |
| Teepen & Davis | 550 | 820 | 328 00 | 375 25 | 703 25 |
| Gerke & Lippelman | 540 | 697 | 278 80 | 337 50 | 616 30 |
| Fleishman & Co | 1,100 | 1,242 | 496 80 | 593 60 | 1,090 40 |
| Pattison & Caldwell | 720 | 824 | 329 60 | 396 00 | 725 60 |
| Geo. Davis & Co | 900 | 831 | 332 40 | 375 00 | 707 40 |
| James Emmitt | 600 | 550 | 220 00 | 271 35 | 491 35 |
| Saint Louis Distilling Company | 917 | 738 | 295 20 | ..... | 295 20 |
| Teuscher Distilling Company | 1,150 | 915 | 366 00 | 587 55 | 953 55 |
| Atlas Distilling Company | 624 | 1,100 | 440 00 | 548 50 | 988 50 |
| Kansas City Distilling Company | 634 | 699 | 279 60 | 585 95 | 865 55 |
| Iowa City Alcohol Works | 600 | 200 | 80 00 | 125 00 | 205 00 |
| C. I. Pfeffer | 200 | ..... | ..... | ..... | ..... |

| Names of distillers. | One-half capacity. | Average daily mashing to March 31. | Assessment of 40 cents a bushel one day to pay March indebtedness. | Assessment of 2½ cents a bushel during April to pay April indebtedness. | Total amount of assessment. |
|---|---|---|---|---|---|
| Willow Springs Distilling Company | 800 | 612 | $480 00 | $750 00 | $1,230 00 |
| Lithia Springs Distilling Company | 350 | 450 | 180 00 | 200 00 | 380 00 |
| Iowa Distilling Company | 500 | 414 | 165 60 | 181 25 | 346 85 |
| Scofield & Tevis | 1,000 | 700 | 280 00 | 312 50 | 592 50 |
| California Distilling Company | 600 | 437 | 174 80 | 130 62 | 305 42 |
| Pacific Distilling Company | 600 | 450 | 180 25 | 136 87 | 317 12 |

GENTLEMEN: We call your attention particularly to the proceedings of the executive committee meeting inclosed herewith. You will find the expenses of the association up to the first day of April have been $590,563.87, and the money paid out for the following purposes: 75 per cent. for bonus on export; 14 per cent. for cut capacity; 11 per cent. for maintaining the market, overassessments, and running expenses.

It is not pleasant for your officers to make these assessments, but there is no help for it. While you are looking over them, you must remember that on the expiration of our association, on May 1, we left your warehouses empty, with a firm $1.17 market, and in just eight days the market receded to $1.12, which is equal to an assessment of 20 cents a bushel daily, and the difference between the association prices and the present prices would pay your debt in five days. Whatever spasmodic variation there may be in prices from day to day, they will finally and inevitably settle down to the price exports will bring.

We entreat you, therefore, to be prompt in forwarding your assessment, so that we can meet in Chicago with a clean record. The treasurer will not draw his draft until the 20th day of May. A full report of every dollar of the expenditure will be furnished you as soon as the debts are paid, so it can be made out.

By order of the executive committee.

H. B. MILLER, *President.*
W. N. HOBART, *Treasurer.*

By Mr. COCKRELL:

Q. Did you make an assessment in May?—A. No, sir.

Q. The last assessment is what you call the special assessment?—A. Yes; that is the special assessment. It was made in May, but it was to cover debts previous to the 1st of May.

By the CHAIRMAN:

Q. Now, you have given me Mr. Hobart's reports. Let us put them in order. The report of January 5 shows the expenditures for the months of November and December. The next report shows the expenditures for January; the next for February, and then there are two reports in one for February and March.—A. Yes; that accounts for everything except April.

Western Export Association. H. B. Miller, president and secretary, Riverton, Ill. W. N. Hobart, Treasurer, Cincinnati, Ohio.

CINCINNATI, *January* 5, 1882.

M——:

The president of the association reports to me the estimated assessment against your house for January to be $———. If I do not receive check for this amount prior to January 10, I will draw on you at sight for the amount, which draft please honor. Should you have any claim for bonus for alcohol run or capacity not run, in December, please forward the proper certificate to me, and it will be credited against the above amount, and all vouchers now in my hands will be properly credited.

The actual amount due to December 31 will be properly adjusted when reports of mashing to that time are received, and payment will be made for December vouchers, which have not yet been liquidated, as soon as sufficient money is collected. All members exporting will please send vouchers in as rapidly as shipments are made, and they will be paid in their order as fast as means accumulate in the treasurer's hands.

Drafts on the treasurer must not be drawn under any circumstances, as no one drawing can tell what the condition of the treasury may be. Send proper vouchers, and there will be no delay if there are funds on hand.

You will find herewith my report to January 1, properly audited, giving you full details. I am happy to say that there are no delinquent members.

WILLIAM N. HOBART,
*Treasurer Western Export Association.*

*William N. Hobart, Treasurer, in account with Western Export Association.*

DR.

Assessments from November 21 to December 31, as follows:

| | | |
|---|---|---|
| H. A. Shufeldt & Co., Chicago | $795 60 | |
| Empire Distilling Company, Chicago | 323 28 | |
| Chicago Distilling Company, Chicago | 336 00 | |
| Garden City Distilling Company, Chicago | 376 20 | |
| Riverdale Distilling Company Chicago | 917 64 | |
| Phoenix Distilling Company, Chicago | 799 20 | |
| United States Distilling Company, Chicago | 321 12 | |
| Zell, Schwabacher & Co., Peoria | 1,620 00 | |
| Woolner Bros. & Co., Peoria | 741 60 | |
| J. W. Johnson, Peoria | 324 00 | |
| G. T. Barker, Peoria | 433 44 | |
| Bush & Brown, Peoria | 692 64 | |
| Great Western Distilling Company, Peoria | 918 00 | |
| Spurk & Francis, Peoria | 432 00 | |
| Oscar Furst, Peoria | 826 56 | |
| Monarch Distilling Company, Peoria | 2,699 28 | |
| C. S. Clarke & Co., Peoria | 900 00 | |
| Hamburg Distilling Company, Pekin | 669 96 | |
| Crown Distilling Company, Pekin | 219 60 | |
| Riverton Alcohol Works, Riverton | 748 80 | |
| John S. Miller, & Co., Sterling | 384 48 | |
| John G. Hornstien, Canton | 90 00 | |
| C. J. Pfeffer, Lebanon | 72 00 | |
| Teutscher Distilling Company, Saint Louis | 338 40 | |
| Saint Louis Distilling Company, Saint Louis | 664 92 | |
| Atlas Distilling Company, Des Moines | 1,272 24 | |
| Kansas City Distilling Company, Kansas City | 228 24 | |
| Fairbanks & Duenweg, Terre Haute | 483 39 | |
| Kuhlman & Teepen, Brookville | 72 00 | |
| John Beggs, Shelbyville | 252 00 | |
| W. H. Baker's Sons, Indianapolis | 138 24 | |
| Iowa City Alcohol Works, Iowa City | 72 00 | |
| Walsh & Kellogg, Cincinnati | 3,420 00 | |
| Millcreek Distilling Company, Cincinnati | 1,584 00 | |
| Maddux, Hobart & Co., Cincinnati | 1,242 00 | |
| George K. Duckworth, Cincinnati | 1,152 00 | |
| Teepen & Davis, Cincinnati | 797 40 | |
| Fleischman & Co., Cincinnati | 828 00 | |
| G. H. Rabe, Cincinnati | 486 00 | |
| Gerke & Lippelman, Cincinnati | 725 76 | |
| E. Arleth, Cincinnati | 108 00 | |
| C. Dodsworth, Cincinnati | 529 20 | |
| Freiberg & Workum, Cincinnati | 180 00 | |
| Pattison & Caldwell, Hamilton, Ohio | 518 40 | |
| Dair Bros., Harrison, Ohio | 576 00 | |
| George Davis & Co., Portsmouth | 324 00 | |
| G. Holterhoff, Covington | 216 00 | |
| Dorsel & Wulftange, Covington | 189 00 | |
| G. W. Robson, jr., & Co | 311 04 | |
| F. A. Bensberg | 225 00 | |
| | | 32,574 63 |

CR.

By payment for bonus on alcohol exported:

| | Gallons at 7 cents. | | |
|---|---|---|---|
| Empire Distilling Company | 3,506 | $245 42 | |
| Garden City Distilling Company | 14,043½ | 983 05 | |
| United States Distilling Company | 6,944 | 486 08 | |
| Woolner Bros. & Co | 10,223½ | 715 64 | |
| J. W. Johnson | 3,561½ | 249 30 | |
| Atlas Distilling Company | 14,964½ | 1,047 51 | |
| Oscar Furst | 10,402 | 728 14 | |
| C. S. Clarke & Co | 3,289½ | 230 26 | |
| Fairbanks & Duenweg | 5,401½ | 378 10 | |
| Riverton Alcohol Works | 21,108 | 1,477 56 | |
| Total | 93,444 | 6,541 06 | |
| | | | $6 541 06 |

| | Gallons at 10 cents. | | |
|---|---|---|---|
| Great Western District Company | 9,944½ | $994 45 | |
| Spurk & Francis | 6,541½ | 654 15 | |
| Monarch Distilling Company | 38,326 | 3,832 60 | |
| Riverton Alcohol Works | 23,258 | 2,325 80 | |
| J. S. Miller & Co | 23,800 | 2,380 00 | |
| Saint Louis Distilling Company | 2,318½ | 231 85 | |
| Total | 104,188½ | 10,418 85 | |
| | | | 10,418 85 |

| | Gallons at 12 cents. | | |
|---|---|---|---|
| Monarch Distilling Company | 40,187 | 4,822 44 | |
| Great Western Distilling Company | 20,327 | 2,439 24 | |
| Spurk & Francis | 12,459 | 1,495 14 | |
| Woolner Bros. & Co | 5,946 | 713 52 | |
| Riverton Alcohol Works | 23,261 | 2,791 38 | |
| Atlas Distilling Company | 9,303 | 1,116 36 | |
| Total | 111,484 | 13,378 08 | |
| | | | 13,378 08 |

Paid for capacity run less than 50 per cent.:

| | | |
|---|---|---|
| Empire Distilling Company | 11 70 | |
| Fairbanks & Duenweg | 423 00 | |
| Garden City Distilling Company | 113 70 | |
| United States Distilling Company | 8 80 | |
| T. & J. W. Gaff & Co | 576 00 | |
| John Beggs | 55 00 | |
| W. H. Baker's Sons | 57 60 | |
| | | 1,245 80 |

Expense account:

| | | |
|---|---|---|
| H. B. Miller's expense in getting up association | 200 00 | |
| H. B. Miller, for printing | 22 25 | |
| H. B. Miller, for telegraphing | 26 27 | |
| J. Abel, expenses to Cincinnati | 20 00 | |
| Cost of collecting drafts | 2 44 | |
| Telegraphs paid by treasurer | 2 49 | |
| | | 273 45 |
| | | $31,857 24 |
| Balance cash in treasurer's hands | | 717 39 |

There are unpaid export vouchers:

| | |
|---|---|
| Hamburg Distilling Company | 2,386 78 |
| Oscar Furst | 3,036 33 |
| Bush & Brown | 835 14 |
| Atlas Distilling Company | 1,035 42 |
| Crown Distilling Company | 709 72 |
| Riverton Alcohol Works | 1,114 20 |

| | | | |
|---|---|---|---|
| Willow Springs Distilling Company | | | $2,892 24 |
| Less December assessment | 1,053 00 | | |
| | | 1,839 24 | |
| Saint Louis Distilling Company | | 354 18 | |
| C. S. Clarke & Co. | | 758 30 | |
| G. T. Barker | | 1,938 36 | |
| Riverdale Distilling Company | | | 3,220 26 |
| Phœnix Distilling Company | | | 1,129 08 |
| Garden City Distilling Company | | | 1,125 90 |
| Zell, Schwabacher & Co | | | 4,112 58 |
| Teepen & Davis | | | 3,594 36 |
| C. Dodsworth | | | 397 62 |
| Fleischman & Co | | | 732 12 |
| Pattison & Caldwell | | | 2,263 98 |
| Monarch Distilling Company | | | 1,115 22 |
| Jas. W. Johnson | | | 3,034 14 |
| | | | 34,752 93 |

CINCINNATI, *January* 3, 1882.

The undersigned, a committee appointed by Mr. H. B. Miller, president, to audit the accounts of the treasurer, hereby certify that the collections of the treasurer, as reported, agree with the assessment list reported by the president, and that the treasurer has filed vouchers for all his payments which agree with his statement.

THOMAS T. GAFF,
JOHN BEGGS,
*Auditing Committee.*

[Western Export Association. H. B. Miller, President and Secretary, Riverton, Ill. W. N. Hobart, Treasurer, Cincinnati, Ohio.]

CINCINNATI, *February* 4, 1882.

M———:

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The president of the association reports to me the estimated assessment against your house for February, to be $———. If I do not receive a check for this amount prior to February 8, I will draw on you at sight for the amount, which draft please honor. Against this amount you are entitled to any credits for export bills now in my hands, as per statement in this report, or for any additional claim for export made prior to February 5th, or for capacity less than 50 per cent. not run in January. If you remit you can make any such claims; if not, please forward vouchers to me promptly. The rules of the association will not permit you to apply any credits for exports made later than February 5, or capacity not run in February, as an offset to the above assessment.

The amount collected the past month has not enabled the Treasurer to pay any export claims of a later date than January 3, the cash balance being insufficient to pay the claims of the 4th. So far as not cancelled by assessments, these vouchers will be paid off in the order of their dates as fast as money is received, and subsequent vouchers will be paid in their proper order. It is, therefore, important that shippers should send their vouchers as soon as exports are made.

I respectfully refer you to the appended report, which contains full particulars of all transactions, and which has been properly audited.

WILLIAM N. HOBART,
*Treasurer Western Export Association.*

*William N. Hobart, Treasurer, in account with Western Export Association.*

DR.

| | |
|---|---|
| To balance on hand January 1, 1882 | $717 39 |
| Assessments collected as follows: | |
| Garden City Distilling Company, Chicago | $1,033 50 |
| Empire Distilling Company, Chicago | 757 90 |
| Chicago Distilling Company, Chicago | 1,300 00 |
| Riverdale Distilling Company, Chicago | 2,122 90 |

| | |
|---|---|
| Phœnix Distilling Company, Chicago | $1,846 00 |
| H. H. Shufeldt & Co., Chicago | 2,446 60 |
| United States Distilling Company, Chicago | 845 00 |
| Spurk & Francis, Peoria | 1,560 00 |
| G. T. Barker, Peoria | 1,565 20 |
| Zell, Schwabacher & Co., Peoria | 3,250 00 |
| Oscar Furst, Peoria | 1,393 60 |
| Woolner Brothers, Peoria | 1,846 00 |
| Monarch Distilling Company, Peoria | 5,415 80 |
| J. W. Johnson, Peoria | 1,170 00 |
| C. S. Clark & Co., Peoria | 1,690 00 |
| Bush & Brown, Peoria | 1,253 20 |
| Great Western Distilling Company, Peoria | 3,322 80 |
| Riverton Alcohol Works, Riverton | 1,872 00 |
| Crown Distilling Company, Pekin | 791 70 |
| Hamburg Distilling Company, Pekin | 1,606 80 |
| John S. Miller & Co., Sterling | 1,388 40 |
| Kuhlman & Teepen, Brookville | 260 00 |
| Dair Brothers, Harrison | 1,040 00 |
| Fairbanks & Duenweg, Terre Haute | 1,775 39 |
| W. H. Baker's Sons, Indianapolis | 499 20 |
| John G. Hornstein, Canton | 325 00 |
| John Beggs, Shelbyville | 780 00 |
| Dorsel & Wulftange, Covington | 682 50 |
| G. Holterhoff, Covington | 780 00 |
| G. W. Robson, jr., & Co., Newport, Ky | 780 00 |
| Freiburg & Workum, Cincinnati | 130 00 |
| Caleb Dodsworth, Cincinnati | 727 80 |
| G. H. Rabe, Cincinnati | 975 00 |
| Maddux, Hobart & Co., Cincinnati | 2,145 00 |
| Millcreek Distilling Company, Cincinnati | 3,640 00 |
| Walsh & Kellogg, Cincinnati | 6,110 00 |
| Teepen & Davis, Cincinnati | 1,495 00 |
| Gerke & Lippelman, Cincinnati | 1,341 60 |
| Fleischmann & Co., Cincinnati | 1,950 00 |
| Pattison & Caldwell, Cincinnati | 1,248 00 |
| A. H. Smith, Cincinnati | 1,040 00 |
| George Davis & Co., Portsmouth | 1,170 00 |
| Saint Louis Distilling Company, Saint Louis | 1,595 10 |
| Teuscher Distilling Company, Saint Louis | 1,215 21 |
| Atlas Distilling Company, Des Moines | 2,072 20 |
| Kansas City Distilling Company, Kansas City | 824 20 |
| Iowa City Alcohol Works, Iowa City | 260 00 |
| Willow Springs Distilling Company, Omaha (December) | 1,053 00 |
| Willow Springs Distilling Company, Omaha (January) | 2,262 00 |
| Iowa Distilling Company, Camanche | 650 00 |
| Lithia Springs Distilling Company, Saint Louis | 783 30 |
| James Emmett, Waverly | 624 00 |
| C. J. Pfeffer, Lebanon | 260 00 |
| N. Oester, Lawrenceburg | 195 00 |
| W. P. Squibb & Co., Lawrenceburg | 214 50 |
| | 80,097 79 |

Cr.

By payment for bonus on alcohol exported in December—

Gallons at 10 cents.

| | | | |
|---|---|---|---|
| Zell, Schwabacher & Co | 16,257 | $1,625 70 | |
| Riverdale Distilling Company | 12,675 | 1,267 50 | |
| Oscar Furst | 6,466½ | 646 65 | |
| Hamburg Distilling Company | 7,054 | 705 40 | |
| | 42,452½ | 4,245 25 | $4,245 25 |

Gallons at 12 cents.

| | | |
|---|---|---|
| Willow Springs Distilling Company | 24,102 | $2,892 24 |
| Zell, Schwabacher & Co | 20,724 | 2,486 88 |
| Riverdale Distilling Company | 16,273 | 1,952 76 |
| Oscar Furst | 19,914 | 2,338 68 |

| | Gallons at 12 cents. | | | |
|---|---|---|---|---|
| United States Distilling Company ... | 2,993½ | ..... | $359 22 | |
| Kansas City Distilling Company .... | 9,153½ | ..... | 1,098 42 | |
| Garden City Distilling Company .... | 9,382½ | ..... | 1,125 90 | |
| Jas. W. Johnson ..... | 25,284½ | ..... | 3,034 14 | |
| G. T. Barker..... | 16,153 | ..... | 1,938 36 | |
| Fairbanks & Duenweg..... | 2,752½ | ..... | 330 30 | |
| C. S. Clarke & Co..... | 6,319 | ..... | 758 30 | |
| Saint Louis Distilling Company ..... | 2,951½ | ..... | 354 18 | |
| Monarch Distilling Company..... | 9,293½ | ..... | 1,115 22 | |
| Riverton Alcohol Works..... | 9,285 | ..... | 1,114 20 | |
| Bush & Brown..... ..... | 6,959 | ..... | 835 14 | |
| Millcreek Distilling Company..... | 7,093½ | ..... | 851 22 | |
| Atlas Distilling Company ..... | 26,620½ | ..... | 3,194 46 | |
| Crown Distilling Company ..... | 6,081 | ..... | 729 72 | |
| Woolner Bros. & Co ..... | 7,028½ | ..... | 843 42 | |
| Phœnix Distilling Company..... | 9,409 | ..... | 1,129 08 | |
| Hamburg Distilling Company ..... | 17,511 | ..... | 2,101 32 | |
| C. Dodsworth..... | 3,313½ | ..... | 397 62 | |
| Pattison & Caldwell ..... | 18,867 | ..... | 2,264 04 | |
| Fleischman & Co..... | 6,101 | ..... | 732 12 | |
| Teepen & Davis ..... | 29,953 | ..... | 3,594 36 | |
| | 313,519 | | 37,622 30 | $37,622 30 |

Paid for alcohol exported in January—

| | Gallons at 13 cents. | | | |
|---|---|---|---|---|
| Riverton Alcohol Works..... | 23,146 | ..... | $3,008 98 | |
| Woolner Brothers..... | 6,978 | ..... | 907 14 | |
| Fairbanks & Duenweg..... | 6,819½ | ..... | 886 53 | |
| Hamburg Distilling Company..... | 13,987 | ..... | 1,818 31 | |
| John S. Miller & Co ..... | 27,596½ | ..... | 3,587 55 | |
| Great Western Distilling Company.. | 26,333 | ..... | 3,423 28 | |
| Saint Louis Distilling Company..... | 2,929½ | ..... | 380 83 | |
| Atlas Distilling Company..... | 3,128 | ..... | 406 64 | |
| Monarch Distilling Company..... | 6,985 | ..... | 908 05 | |
| Spurk & Francis..... | 12,691½ | ..... | 1,649 89 | |
| Teepen & Davis..... | 3,680 | ..... | 478 40 | |
| | 134,274 | | 17,455 60 | 17,455 60 |

Paid for capacity run less than 50 per cent.—

| | | |
|---|---|---|
| Fairbanks & Duenweg..... | $980 20 | |
| Garden City Distilling Company..... | 86 70 | |
| United States Distilling Company..... | 47 80 | |
| Iowa Alcohol Company..... | 1,152 00 | |
| Patoka Distilling Company..... | 300 00 | |
| John G. Hornstien..... | 720 00 | |
| John Beggs..... | 310 00 | |
| W. H. Baker's Sons..... | 83 20 | |
| Kuhlman & Teepen..... | 52 20 | |
| Empire Distilling Company..... | 632 90 | |
| Aurora Distilling Company..... | 1,728 00 | |
| C. Dodsworth..... | 79 20 | |
| Teuscher & Co..... | 522 90 | |
| Kansas City Distilling Company..... | 190 20 | $6,835 30 |
| Paid Stevens, Dair & Co., on account, per order of executive committee..... | 8,000 00 | |
| Paid Stevens, Dair & Co., commission account, per order of executive committee..... | 3,292 32 | $11,292 32 |
| Forward..... | | 77,500 77 |

Expense items—

| | | |
|---|---|---|
| A. Bevis, attending meetings of committee..... ..... | $56 00 | |
| A. Woolner, attending meetings of committee ..... | 18 00 | |
| J. Abel, attending meetings of committee ..... ..... | 19 50 | |
| Dair Bros., overassessment in November..... | 32 40 | |
| Cost of collecting drafts paid by treasurer..... | 6 45 | |

| | | |
|---|---|---|
| Telegraphs paid by treasurer | $6 77 | |
| Postage stamps paid by treasurer | 12 75 | |
| H. B. Miller, president, traveling expenses | 148 00 | |
| H. B. Miller, president, telegraphing | 50 69 | |
| H. B. Miller, president, printing | 15 00 | |
| H. B. Miller, president, postage stamps | 18 00 | |
| | | $383 56 |
| | | 77,884 33 |
| Balance cash in treasurer's hand | | 2,213 46 |
| | | 80,097 79 |

Unpaid—

E. Arleth ..... $390

The San Francisco distillers came into the association too late in the month to obtain their assessments in time for this month's statement.

There are unpaid export vouchers—

| | |
|---|---|
| Riverton Alcohol Works | $9,531 70 |
| Hamburg Distilling Company | 2,536 30 |
| Kansas City Distilling Company | 1,802 58 |
| Empire Distilling Company | 908 57 |
| Atlas Distilling Company | 3,293 83 |
| Monarch Distilling Company | 4,153 80 |
| Great Western Distilling Company | 2,446 57 |
| Riverdale Distilling Company | 2,391 14 |
| Phœnix Distilling Company | 702 00 |
| Iowa Distilling Company | 1,997 87 |
| Iowa Alcohol Company | 908 37 |
| Zell, Schwabacher & Co | 2,867 03 |
| Oscar Furst | 2,908 81 |
| C. Dodsworth | 474 42 |
| Teepen & Davis | 6,215 54 |
| Fairbanks & Duenweg | 837 67 |
| J. W. Johnson | 4,416 69 |
| Pattison & Caldwell | 5,319 30 |
| C. S. Clarke & Co | 1,229 33 |
| Spurk & Frances | 1,384 12 |
| Fleischman & Co | 1,055 92 |
| Woolner Bros. & Co | 2,430 08 |
| G. T. Baker | 1,025 10 |
| Willow Springs Distilling Company | 2,282 40 |
| United States Distilling Company | 451 27 |
| | 63,570 41 |

CINCINNATI, *February* 4, 1882.

The undersigned, a committee appointed by Mr. H. B. Miller, president, to audit the accounts of the treasurer, hereby certify that the collections of the treasurer, as reported, agree with the amended assessment list reported by the president, and that the treasurer has filed vouchers for all his payments, which agree with his statement.

THOMAS T. GAFF,
JOHN BEGGS,
*Auditing Committee.*

[Western Export Association. H. B. Miller, president and secretary, Riverton, Ill. W. N. Hobart, treasurer, Cincinnati, Ohio ]

CINCINNATI, *March* 4, 1882.

M ——:

The executive committee of the association, at its meeting held in Cincinnati February 28 and March 1, decided to make the assessment for March 15 cents per bushel, the object being to clear up the debt of the association, and pay new claims this month promptly. In order to pay the existing debt promptly and at the same time lighten payments, they decided to make 10 cents per bushel of this payable on or before March 5, and 5 cents per bushel on or before March 20. The president of the association reports to me the estimated assessment against your house for

March to be $ ———. Two-thirds of this is $ ———, for which amount I will draw on you on March 8, if I do not receive check prior to that time. Against this amount you are entitled to any credits for export bills now in my hands, as per statement in this report, or for any additional claim for export made prior to March 5, or for capacity less than 50 per cent. not run in February. If you remit you can make any such claims; if not, please forward vouchers to me promptly. The rules of the association will not permit you to apply any credits for exports made later than March 5, or capacity not run in February, as an offset to the above assessment.

For the remaining one-third, $———, I will draw on you March 23, if I do not receive remittance sooner, less any claims which may be forwarded me as an offset.

The amount collected the past month has not enabled the treasurer to pay any export claims of a later date than February 15, the cash balance being insufficient to pay the claims of the 16th. So far as not canceled by assessments, these vouchers will be paid off in the order of their dates, as fast as money is received, and subsequent vouchers will be paid in their proper order. It is therefore important that shippers should send their vouchers as soon as exports are made.

I respectfully refer you to the appended report, which contains full particulars of all transactions, and which has been properly audited.

WILLIAM N. HOBART,
*Treasurer Western Export Association.*

*William N. Hobart, treasurer, in account with Western Export Association.*

DR.

| | |
|---|---|
| To balance on hand January 1, 1882 | $2,213 46 |
| Assessments collected as follows: | |
| Garden City Distilling Company, Chicago | 1,908 00 |
| Empire Distilling Company, Chicago | 1,416 00 |
| Chicago Distilling Company, Chicago | 2,400 00 |
| Riverdale Distilling Company, Chicago | 3,644 40 |
| Phœnix Distilling Company, Chicago | 3,168 00 |
| H. H. Shufeldt & Co., Chicago | 4,418 40 |
| United States Distilling Company, Chicago | 1,608 75 |
| Spurk & Francis, Peoria | 2,880 00 |
| G. T. Barker, Peoria | 2,889 60 |
| Zell, Schwabacher & Co., Peoria | 5,400 00 |
| Oscar Furst, Peoria | 2,205 60 |
| Woolner Brothers, Peoria | 3,216 00 |
| Monarch Distilling Company, Peoria | 8,998 80 |
| J. W. Johnson, Peoria | 2,160 00 |
| C. S. Clarke & Co., Peoria | 2,760 00 |
| Bush & Brown, Peoria | 2,025 60 |
| Great Western Distilling Company, Peoria | 6,134 40 |
| Riverton Alcohol Works, Riverton | 2,688 00 |
| Crown Distilling Company, Pekin | 1,443 31 |
| Hamburg Distilling Company, Pekin | 2,755 20 |
| John S. Miller & Co., Sterling | 2,563 20 |
| Kuhlman & Teepen, Brookville | 345 00 |
| Dair Brothers, Harrison | 1,625 00 |
| Fairbanks & Duenweg, Terre Haute | 3,232 80 |
| W. H. Baker's Sons, Indianapolis | 921 60 |
| John G. Hornstien, Canton | 600 00 |
| John Beggs, Shelbyville | 1,440 00 |
| G. Holterhoff, Covington | 720 00 |
| G. W. Robson, jr., & Co., Newport, Ky | 1,440 00 |
| Freiberg & Workum, Cincinnati | 130 00 |
| Caleb Dodsworth, Cincinnati | 1,440 00 |
| G. H. Rabe, Cincinnati | 1,093 00 |
| Maddux, Hobart & Co., Cincinnati | 3,420 00 |
| Millcreek Distilling Company, Cincinnati | 5,280 00 |
| Walsh & Kellogg, Cincinnati | 8,700 00 |
| Teepen & Davis, Cincinnati | 1,914 00 |
| Gerke & Lippelman, Cincinnati | 1,658 40 |
| Fleischmann & Co., Cincinnati | 3,360 00 |
| Pattison & Caldwell, Cincinnati | 2,160 00 |
| A. H. Smith, Cincinnati | 1,920 00 |
| George Davis & Co., Portsmouth | 2,160 00 |
| Saint Louis Distilling Company, Saint Louis | 2,200 80 |

| | |
|---|---|
| Teuscher Distilling Company, Saint Louis | 2,256 00 |
| Atlas Distilling Company, Des Moines | 3,243 60 |
| Kansas City Distilling Company, Kansas City | 1,521 60 |
| Iowa City Alcohol Works, Iowa City | 480 00 |
| Willow Springs Distilling Company, Omaha | 3,240 00 |
| Iowa Distilling Company, Camanche | 1,200 00 |
| Lithia Springs Distilling Company, Saint Louis | 1,380 00 |
| James Emmett, Waverley | 1,440 00 |
| N. Oester, Lawrenceburg (in part) | 195 00 |
| W. P. Squibb & Co., Lawrenceburg (in part) | 214 50 |
| Scofield & Tevis, San Francisco (January) | 876 95 |
| Scofield & Tevis, San Francisco (February) | 1,920 00 |
| California Distilling Company, San Francisco (January) | 683 60 |
| California Distilling Company, San Francisco (February) | 1,255 20 |
| Pacific Distilling Company, San Francisco (January) | 329 00 |
| Pacific Distilling Company, San Francisco (February) | 1,580 40 |
| Potero Yeast & Distilling Company, San Francisco | 131 30 |
| George and Thomas Farthing, Buffalo | 475 00 |
| E. N. Cook & Co., Buffalo | 475 00 |
| | 137,555 47 |

CR.

By payments for bonus on alcohol exported in January:

Gallons at 13 cents.

| | | | |
|---|---|---|---|
| Atlas Distilling Company | 12,007 | $1,560 91 | |
| James W. Johnson | 17,635 | 2,292 55 | |
| Fairbanks & Duenweg | 1,139½ | 148 13 | |
| Zell, Schwabacher & Co | 7,099 | 922 87 | |
| Iowa Alcohol Co. | 6,987½ | 908 37 | |
| Riverton Alcohol Works | 30,313½ | 3,940 75 | |
| Oscar Furst | 10,457½ | 1,359 47 | |
| Empire Distilling Company | 6,989 | 908 57 | |
| Kansas City Distilling Company | 13,866 | 1,802 58 | |
| Hamburg Distilling Co | 3,499½ | 454 93 | |
| C. Dodsworth | 3,634½ | 472 48 | |
| Teepen & Davis | 12,021 | 1,562 73 | |
| Iowa Distilling Company | 7,094 | 922 22 | |
| | 132,743 | | $17,256 56 |

Gallons at 15 cents.

| | | | |
|---|---|---|---|
| James W. Johnson | 14,161 | 2,124 14 | |
| Woolner Bros. Distilling Company | 16,200½ | 2,430 08 | |
| Monarch Distilling Company | 27,692 | 4,153 80 | |
| Oscar Furst | 10,329 | 1,549 34 | |
| Great Western Distilling Company | 16,310½ | 2,446 57 | |
| Spurk & Francis | 9,227½ | 1,384 12 | |
| G. T. Barker | 6,834 | 1,025 10 | |
| C. S. Clarke & Co. | 8,195½ | 1,229 33 | |
| Zell, Schwabacher & Co | 12,961 | 1,944 16 | |
| Hamburg Distilling Company | 13,882½ | 2,082 37 | |
| Riverton Alcohol Works | 37,273 | 5,590 95 | |
| H. H. Shufeldt & Co | 2,337½ | 350 62 | |
| United States Distilling Company | 3,008½ | 451 27 | |
| Riverdale Distilling Company | 15,941 | 2,391 14 | |
| Phœnix Distilling Company | 4,680 | 702 00 | |
| Fairbanks & Duenweg | 4,597 | 689 54 | |
| Iowa Distilling Company | 7,171 | 1,075 65 | |
| Atlas Distilling Company | 11,966 | 1,794 90 | |
| Willow Springs Distilling Company | 24,353½ | 3,653 03 | |
| Kansas City Distilling Company | 9,284½ | 1,392 67 | |
| Teepen & Davis | 36,443½ | 5,466 51 | |
| Pattison & Caldwell | 35,462 | 5,319 30 | |
| Fleischman & Co | 7,039½ | 1,055 93 | |
| | 335,350½ | | 50,302 52 |

For bonus on alcohol exported in February:

| | Gallons at 17 cents. | | | |
|---|---|---|---|---|
| Zell, Schwabacher & Co | 13,943½ | | $2,370 40 | |
| Woolner Bros. Distilling Company | 13,588½ | | 2,310 04 | |
| Monarch Distilling Company | 25,459 | | 4,328 02 | |
| Great Western Distilling Company | 14,138½ | | 2,403 54 | |
| Spurk & Francis | 7,039½ | | 1,196 72 | |
| James W. Johnson | 10,466½ | | 1,779 31 | |
| Oscar Furst | 7,016½ | | 1,192 80 | |
| C. S. Clarke & Co | 3,518 | | 598 06 | |
| Hamburg Distilling Company | 10,299 | | 1,750 83 | |
| J. S. Miller & Co | 27,271½ | | 4,636 15 | |
| Riverton Alcohol Works | 13,963 | | 2,373 71 | |
| Iowa Distilling Company | 14,158½ | | 2,406 77 | |
| Iowa Alcohol Company | 9,371½ | | 1,593 15 | |
| Atlas Distilling Company | 5,960½ | | 1,013 30 | |
| Fairbanks & Duenweg | 11,724½ | | 1,993 16 | |
| Pattison & Caldwell | 19,362 | | 3,291 53 | |
| Teepen & Davis | 9,190½ | | 1,562 38 | |
| C. Dodsworth | 3,562½ | | 605 62 | |
| | 220,033 | | | $37,405 49 |

| | Gallons at 20 cents. | | |
|---|---|---|---|
| Riverton Alcohol Works | 15,072½ | $3,014 50 | |
| Teepen & Davis | 12,193 | 2,438 60 | |
| Walsh & Kellogg | 7,086½ | 1,417 30 | |
| | 34,352 | | 6,870 40 |

Paid for capacity run less than 50 per cent:

| | | |
|---|---|---|
| Empire Distilling Company | $1,601 60 | |
| United States Distilling Company | 1,063 40 | |
| Garden City Distilling Company | 1,300 00 | |
| Iowa Alcohol Company | 832 00 | |
| John G. Hornstien | 600 00 | |
| J. Morloch | 360 00 | |
| Teuscher Distilling Company | 1,048 80 | |
| Aurora Distilling Company | 1,664 00 | |
| Caleb Dodsworth | 343 20 | |
| Fairbanks & Duenweg | 2,518 85 | |
| W. H. Baker's Sons | 281 50 | |
| James Emmett | 150 00 | |
| John Beggs | 900 00 | |
| Kuhlman & Teepen | 410 20 | |
| Iowa Distilling Company | 25 00 | |
| | | 13,098 55 |

Over assessments refunded:

| | | |
|---|---|---|
| Pacific Distilling Company | 529 05 | |
| John Beggs | 30 00 | |
| Bush & Brown | 32 84 | |
| | | 591 89 |
| Stevens, Dair & Co., balance on order of executive committee | 3,480 42 | |
| Stevens, Dair & Co., commission account per order of ex. com. | 4,558 14 | |
| | | 8,038 56 |

Expense items:

| | | |
|---|---|---|
| Printing treasurer's reports | 11 00 | |
| Telegraphic dispatches, paid by treasurer | 26 26 | |
| Cost of collecting drafts | 7 60 | |
| Expressage on papers | 50 | |
| Postage paid by treasurer | 10 38 | |
| | | 55 74 |
| | | 133,619 71 |
| Balance cash in treasurer's hands | | 3,935 76 |
| | | 137,555 47 |

| | |
|---|---|
| Unpaid: | |
| W. P. Squib & Co., balance | $214 50 |
| N. Oester, balance | 195 00 |
| There are unpaid export vouchers: | |
| Riverton Alcohol Works | 3,014 40 |
| Hamburg Distilling Company | 4,819 40 |
| Atlas Distilling Company | 1,192 70 |
| Monarch Distilling Company | 12,068 30 |
| Great Western Distilling Company | 4,934 80 |
| Iowa Distilling Company | 1,419 60 |
| Zell, Schwabacher & Co | 5,813 10 |
| Oscar Furst | 4,198 10 |
| C. Dodsworth | 710 40 |
| Teepen & Davis | 3,611 60 |
| Fairbanks & Duenweg | 3,955 30 |
| J. W. Johnson | 2,794 80 |
| Pattison & Caldwell | 4,485 80 |
| C. S. Clarke & Co | 2,104 90 |
| Spurk & Francis | 3,496 60 |
| Fleischman & Co | 3,485 20 |
| Woolner Bros. & Co | 2,775 80 |
| G. T. Barker | 2,282 60 |
| Willow Springs Distilling Company | 3,032 50 |
| John S. Miller & Company | 5,520 20 |
| Millcreek Distilling Company | 1,401 80 |
| Bush & Brown | 694 60 |
| Garden City Distilling Company | 1,410 50 |
| United States Distilling Company | 1,103 77 |
| | 80,326 77 |

CINCINNATI, *March* 4, 1882.

The undersigned, a committee appointed by Mr. H. B. Miller, president, to audit the accounts of the treasurer, hereby certify that the collections of the treasurer, as reported, agree with the amended assessment list reported by the president, and that the treasurer has filed vouchers for all his payments, which agree with his statement.

THOMAS T. GAFF,
JOHN BEGGS,
*Auditing Committee.*

[Western Export Association. H. B. Miller, president and secretary, Riverton, Ill. W. N. Hobart, treasurer, Cincinnati, Ohio.]

CINCINNATI, *April* 29, 1882.

GENTLEMEN: My March report has been considerably delayed by the impossibility of making any clear statement until the $3 deficiency assessment was collected as far as possible, and settlements made with the distillers to whom the association was indebted. Owing to the delay of some members in making payments, it will be observed by the report that the debts are not yet entirely canceled there being still due previous to the 1st of April to distillers $20,393.13, and from them $23,742.69. In order to make the statement clearer and more concise, all claims are entered on the credit side, and the unpaid sums deducted from the total. This amount represents the last dividend of 25 per cent., the creditors of the association having been paid 75 per cent. of their claims.

Some of the members, as will be observed by the report, understand that the action of the committee gives them the right to cancel their $3 assessment with April exports, and for this reason their assessments are only reported paid so far as canceled by their March credits, but as it is impossible to make my report in this shape, I am compelled to bring these items down as unpaid. Of the other unpaid assessments I cannot as yet say how many will be paid, but certainly not all.

I would especially urge upon the members the necessity of promptly sending me a report of their April mashing, and their claims on the association, either for export or capacity, in order that I may report as soon as possible to a meeting of the committee, and give them the opportunity of providing for all deficiency.

WILLIAM N. HOBART,
*Treasurer Western Export Association.*

APRIL 29, 1882.

*William N. Hobart, treasurer, in account with Western Export Association.*

| | | | |
|---|---|---|---|
| March 1, | To balance on hand | | $3,935 76 |
| | To error last account | | 1 50 |
| | To collection for back assessments: | | |
| | E. Arleth | $765 00 | |
| | Teepen & Davis | 715 10 | |
| | G. H. Rabe | 450 15 | |
| | | | 1,930 25 |

| Assessments collected. | March assessment. | Three-dollar assessment. |
|---|---|---|
| Garden City Distilling Company, Chicago | $2,146 50 | ..... |
| Empire Distilling Company, Chicago | 2,361 15 | $1,902 00 |
| Chicago Distilling Company, Chicago | 4,050 00 | 2,895 00 |
| Riverdale Distilling Company, Chicago | 5,995 35 | 4,212 00 |
| Phœnix Distilling Company, Chicago | 4,131 00 | 3,513 00 |
| H. H. Shufeldt & Co., Chicago | 7,400 70 | 5,400 00 |
| United States Distilling Company, Chicago | 2,632 50 | 2,025 00 |
| Spurk & Francis, Peoria | 4,800 00 | 3,600 00 |
| G. T. Barker, Peoria | 4,876 20 | On acct. 1,566 50 |
| Zell, Schwabacher & Co., Peoria | 6,225 00 | 5,040 00 |
| Oscar Furst, Peoria | 2,985 00 | 2,223 00 |
| | 47,662 40 | 32,976 50 |
| Woolner Brothers, Peoria | 4,455 00 | On acct. 1,831 70 |
| Monarch Distilling Company, Peoria | 14,623 20 | 9,999 00 |
| J. W. Johnson, Peoria | 3,645 00 | 2,700 00 |
| C. S. Clarke & Co., Peoria | 3,620 00 | On acct. 2,112 40 |
| Bush & Brown, Peoria | 2,802 60 | 1,989 00 |
| Great Western Distilling Company, Peoria | 10,351 81 | 7,668 00 |
| Riverton Alcohol Works, Riverton | 4,536 00 | 3,432 00 |
| Crown Distilling Company, Pekin | 2,466 45 | ..... |
| Hamburg Distilling Company, Pekin | 3,726 00 | 3,000 00 |
| John S. Miller & Co., Sterling | 4,293 00 | 3,240 00 |
| Kuhlman & Teepen, Brookville | ..... | 360 00 |
| Dair Brothers, Harrison | 2,151 00 | 1,691 10 |
| Fairbanks & Duenweg, Terre Haute | 5,455 35 | 4,041 00 |
| W. H. Baker's Sons, Indianapolis | 1,409 40 | On acct. 63 69 |
| | 63,534 81 | 42,127 89 |
| John G. Hornstien, Canton | 1,012 50 | 750 00 |
| John Begga, Shelbyville | 2,430 00 | 1,840 00 |
| G. Holterhoff, Covington | 700 00 | ..... |
| Dorsal & Wulftange, Covington | 948 00 | 870 00 |
| G. W. Robson, jr., & Co., Newport, Ky | 1,215 00 | 900 00 |
| Freiberg & Workum, Cincinnati | 135 00 | ..... |
| Caleb Dodsworth, Cincinnati | 2,430 00 | 1,959 00 |
| G. H. Rabe, Cincinnati | 1,321 35 | 1,596 00 |
| Maddux, Hobart & Co., Cincinnati | 2,430 00 | 2,961 00 |
| Milcreek Distilling Company, Cincinnati | 6,480 00 | 6,456 00 |
| Walsh & Kellogg, Cincinnati | 13,635 00 | 9,810 00 |
| Teepen &. Davis, Cincinnati | 3,118 50 | 2,460 00 |
| Gerke & Lippelman, Cincinnati | 2,187 00 | 2,091 00 |
| Fleischmann & Co., Cincinnati | 4,494 00 | 3,726 00 |
| | 42,536 35 | 35,419 00 |
| Pattison & Caldwell, Cincinnati | 3,204 00 | 2,472 00 |
| George Davis & Co., Portsmouth | 2,475 00 | 2,493 00 |
| Saint Louis Distilling Company, Saint Louis | 934 35 | On acct. 179 37 |
| Teuscher Distilling Company, Saint Louis | 3,821 10 | 2,745 00 |
| Atlas Distilling Company, Des Moines | 3,558 25 | 90 80 |
| Kansas City Distilling Company, Kansas City | 3,582 10 | 2,097 00 |
| Iowa City Alcohol Works, Iowa City | 810 00 | 600 00 |
| Willow Springs Distilling Company, Omaha | 5,265 00 | 1,825 60 |
| Iowa Distilling Company, Camanche | 2,025 00 | 1,242 00 |
| Lithia Springs Distilling Company, Saint Louis | ..... | ..... |
| James Emmitt, Waverly | 2,430 00 | 1,650 00 |
| Schofield & Tevis, San Francisco | 2,416 95 | 2,100 00 |
| California Distilling Company, San Francisco | 1,571 55 | 708 00 |
| Pacific Distilling Company, San Francisco | 1,808 85 | 1,351 89 |
| E. N. Cook & Co., Buffalo | 400 00 | ..... |
| E. Arleth, Cincinnati | ..... | 576 00 |
| G. K. Duckworth, Cincinnati | ..... | 1,800 00 |
| | 34,302 15 | 21,939 86 |
| | 188,036 71 | 132,428 05 |

| | | |
|---|---|---|
| Total regular March assessment collected | | $188,036 71 |
| Total $3 assessment collected | | 132,428 05 |
| | | 326,332 27 |
| Balance due treasure | | 477 29 |
| | | 326,809 56 |

Cr.

| | By bonus on alcohol exported in last half of February. | | | Exported in March. | | | Capacity less than 50 per ct. Feb'y & March. | Over assessments |
|---|---|---|---|---|---|---|---|---|
| | *Galls.* | | | *Galls* | | | | |
| Garden City Distilling Company | 7,062½ | @ 20c., | $1,410 50 | | | | 1,260 00 | |
| Empire Distilling Company | | | | | | | 3,672 60 | $369 90 |
| Chicago Distilling Company | | | | 3,458 | @ 20c., | $651 60 | 560 00 | 420 00 |
| Riverdale Distilling Company | 25,860 | " | 5,172 00 | 29,705½ | " | 5,941 10 | | |
| Phœnix Distilling Company | | | | 7,027 | " | 1,405 40 | 9 20 | 6 90 |
| H. H. Shufeldt & Co | | | | 6,103½ | " | 1,220 70 | | |
| United States Distilling Company | 2,357½ | 17c., | 400 77 | | | | 2,143 40 | |
| | 3,515 | 20c., | 703 00 | | | | | |
| Spark & Francis | 17,483 | " | 3,496 60 | 32,144 | " | 6,428 80 | | |
| G. T. Barker | 14,748 | " | 2,949 60 | 15,959½ | " | 3,191 90 | | |
| Zell, Schwabacher & Co | 29,065½ | " | 5,813 10 | 33,739½ | " | 6,747 90 | | |
| Oscar Furst | 20,990½ | " | 4,195 10 | 31,348 | " | 6,269 60 | | |
| Woolner Bros. Distilling Company | 13,879 | " | 2,775 80 | 16,094½ | " | 3,218 90 | 72 00 | |
| Monarch Distilling Company | 60,241½ | " | 12,048 30 | 92,251 | " | 18,450 20 | | |
| J. W. Johnson | 13,974 | " | 2,794 80 | 38,134½ | " | 7,626 90 | | |
| C. S. Clarke & Co | 10,524½ | " | 2,104 90 | 3,541½ | " | 708 30 | | |
| Bush & Brown | 3,473 | " | 694 60 | 17,560 | " | 3,512 00 | | |
| Great Western Distilling Company | 24,674 | " | 4,934 80 | 66,325 | " | 13,265 00 | | |
| Riverton Alcohol Works | 15,072 | " | 3,014 40 | 62,286 | " | 12,457 20 | 1,662 40 | 966 80 |
| Hamburg Distilling Company | 24,097 | " | 4,819 40 | 27,688½ | " | 5,537 70 | 21 60 | |
| John S. Miller & Co | 27,601 | " | 5,520 20 | 27,925 | " | 5,585 00 | | |
| Kuhlman & Teepen | | | | | | | 1,173 80 | 11 25 |
| Fairbanks & Duenweg | 19,776½ | " | 3,955 30 | 46,289 | " | 9,257 80 | 5,078 40 | 100 65 |
| W. H. Baker's Sons | | | | | | | 201 60 | |
| John G. Hornstein | | | | | | | 2,362 50 | |
| John Begga | | | | | | | 1,790 00 | 30 00 |
| Geo. W. Robson, jr., & Co | | | | | | | | 543 10 |
| C. Dodsworth | 3,552 | " | 710 40 | 3,547 | " | 709 40 | 680 00 | |
| G. H. Rabe | | | | | | | 700 80 | 48 00 |
| E. Arleth | | | | | | | 2,400 00 | |
| G. K. Duckworth | | | | | | | 6,200 00 | 750 00 |
| Maddux, Hobart & Co | | | | | | | 810 00 | 1,170 00 |
| Mill Creek Distilling Company | 7,009 | " | 1,401 80 | | | | 2,160 00 | |
| Walsh and Kellogg | | | | 44,338½ | " | 8,867 70 | | 840 00 |
| Tappan & Davis | 18,058 | " | 3,611 60 | 33,257½ | " | 6,651 50 | | |
| Gerke & Tippelman | | | | | | | | 182 40 |
| Fleishmann & Co | 17,426 | " | 3,485 20 | 18,365 | " | 3,673 00 | | 265 20 |
| Pattison & Caldwell | 22,429 | " | 4,485 80 | 32,332½ | " | 6,466 50 | | |
| Geo. Davis & Co | | | | | | | 1,560 00 | |
| James Emmitt | | | | | | | 1,000 00 | 639 00 |
| Saint Louis Distilling Company | | | | | | | 882 00 | 204 22 |
| Teuscher Distilling Company | | | | | | | 8,112 40 | 404 60 |

CR—Continued.

| | By bonus on alcohol exported in last half of February. | | | Exported in March. | | | Capaccity less than 50 per ct. Feb'y & March. | Over assesments |
|---|---|---|---|---|---|---|---|---|
| | *Galls.* | | | *Galls.* | | | | |
| Atlas Distilling Company | 5,963½ | @ 20 c., | 1,192 70 | 12,019½ | @ 20 c., | 2,403 90 | ..... | ..... |
| Kansas City Distilling Company | ..... | ..... | ..... | 38,280 | " | 7,656 00 | ..... | ..... |
| Iowa City Alcohol Works | 3,493 | " | 698 60 | 10,524½ | " | 2,104 90 | 2,388 00 | ..... |
| Willow Springs Distilling Company | 15,162½ | " | 3,032 50 | 18,297½ | " | 3,659 50 | ..... | ..... |
| Iowa Distilling Company | 10,267 | " | 2,053 40 | 17,658½ | " | 3,531 70 | ..... | ..... |
| Scofield & Tevis | ..... | ..... | ..... | ..... | ..... | ..... | 2,113 05 | ..... |
| California Distilling Company: | ..... | ..... | ..... | ..... | ..... | ..... | 1,264 00 | 124 35 |
| Pacific Distilling Company | ..... | ..... | ..... | ..... | ..... | ..... | 856 05 | ..... |
| Aurora Distilling Company | ..... | ..... | ..... | ..... | ..... | ..... | 3,264 00 | ..... |
| J. Morloch | ..... | ..... | ..... | ..... | ..... | ..... | 405 00 | ..... |
| | 37,844½ | ..... | 87,498 17 | 786,000½ | ..... | 157,200 10 | 50,382 60 | 7,217 37 |

| | | |
|---|---|---|
| Total last half February export bonus as above | | $87,498 17 |
| Total March export bonus as above | | 157,200 10 |
| Total February and March capacity as above | | 50,382 60 |
| Total overassessments refunded as above | | 7,217 37 |
| Expense of protecting Cincinnati market: | | |
| Stevens, Dair & Co., February account as passed by executive committee. | | 20,818 61 |
| Stevens, Dair & Co., March account | | 5,990 88 |
| Stevens, Dair & Co., February alcohol account | | 4,916 06 |
| Stevens, Dair & Co., March alcohol account | | 3,275 77 |
| Gerke & Lippelman, expense of storing highwines | | 437 46 |
| Walsh & Kellogg, cost of running free high wines into alcohol and selling same | | 5,421 40 |
| Maddux, Hobart & Co., for same | | 3,618 68 |
| Expense account: | | |
| H. B. Miller, president.—Printing bills | $19 50 | |
| Telegraphing bills | 41 45 | |
| Postage stamps | 15 00 | |
| Traveling expenses | 77 00 | |
| W. N. Hobart, treasurer.—Printing bills | 33 25 | |
| Telegraphing bills | 14 39 | |
| Postage-stamps | 12 00 | |
| Cost of collecting drafts | 16 15 | |
| Expenses to Chicago | 8 50 | |
| J. Abel, expenses attending meeting | 24 00 | |
| J. B. Grenhut, expenses attending meeting | 60 00 | |
| John Beggs, expenses attending meeting | 29 10 | |
| C. S. Clarke, expenses attending meeting | 30 00 | |
| A. Woolner, expenses attending meeting | 18 00 | |
| A. Bevis, expenses attending meeting | 27 50 | |
| | | 425 59 |
| Total credit items | | 347,202 69 |
| Less balance due distillers, as below | | 20,393 13 |
| | | 326,809 56 |

The balances due distillers are as follows:

| | | |
|---|---|---|
| Spurk & Francis | 366 35 | |
| Empire Distilling Company | 165 54 | |
| Yell, Schwabacher & Co | 174 00 | |
| Oscar Furst | 1,234 62 | |
| Monarch Distilling Company | 987 92 | |
| J. W. Johnson | 927 99 | |
| Bush & Brown | 30 89 | |
| Great Western Distilling Company | 44 99 | |
| Riverton Alcohol Works | 2,115 60 | |
| Hamburg Distilling Company | 329 34 | |
| Kuhlman & Teepen | 198 30 | |
| Fairbanks & Duenweg | 1,554 79 | |
| John G. Hornstein | 600 00 | |
| E. Arleth | 261 00 | |
| Teepin & Davis | 958 23 | |
| Pattison & Caldwell | 805 15 | |
| Kansas City Distilling Company | 333 78 | |
| Iowa Alcohol Company | 713 74 | |
| Iowa Distilling Compay | 562 13 | |
| Aurora Distilling Company | 432 00 | |
| Stevens, Dair & Co | 7,596 77 | |
| | | 20,393 13 |

And there is due the association:

| | | |
|---|---|---|
| G. T Barker, balance $3 assessment | | 2,033 50 |
| Woolner Bros. Distilling Company, balance $3 assessment | | 1,768 30 |
| C. S. Clarke & Co., balance $3 assessment | | 713 60 |
| Crown Distilling Company, balance $3 assessment | | 1,827 00 |
| (The above will all be canceled by April exports.) | | |
| Garden City Distilling Company, last third March | $1,073 25 | |
| $3 assessment | 2,400 00 | |
| | | 3,473 25 |

| | | |
|---|---|---|
| W. H. Baker's Sons, balance $3 assessment | | $1,088 31 |
| Saint Louis Distilling Company, balance $3 assessment | | 2,034 63 |
| Atlas Distilling Company, balance $3 assessment | | 3,209 20 |
| Willow Springs Distilling Company, balance $3 assessment | | 1,764 40 |
| Lithia Springs Distilling Company, March assessment | $2,227 50 | |
| $3 assessment | 1,350 00 | |
| | | 3,577 50 |
| G. Holterhoff, $3 assessment | | 900 00 |
| Freiberg &.Workum, $3 assessment | | 750 00 |
| California Distilling Company, $3 assessment | | 603 00 |
| Total unpaid assessments | | 23,742 69 |
| Excess of assets | | 3,349 56 |

CINCINNATI, *April* 29, 1882.

The undersigned, a committee appointed by Mr. H. B. Miller, president, to audit the accounts of the treasurer, hereby certify that the collections of the treasurer, as reported, agree with the amended assessment lists reported by the president, and that the treasurer has filed vouchers for all his payments, which agree with his statement.

THOMAS T. GAFF,
JOHN BEGGS,
*Auditing Committee.*

## WESTERN EXPORT ASSOCIATION.

### EXTRA ASSESSMENT TO PAY DEBTS.

The figures below give the average number of bushels of grain mashed daily since the existence of our organization by the following different distillers:

| Distillers. | Average number of bushels mashed. | Assessment at $3 per bushel. | Distilllers. | Average number of bushels mashed. | Assessment at $3 per bushel. |
|---|---|---|---|---|---|
| Garden City Distilling Company | 800 | $2,400 | E. Arlett | 192 | 576 |
| Empire Distilling Company | 600 | 1,800 | G. K. Duckworth | 600 | 1,800 |
| Chicago Distilling Company | 1,000 | 3,000 | Maddux, Hobart & Co | 987 | 2,961 |
| Riverdale Distilling Company | 1,404 | 4,212 | Mill Creek Distilling Company | 2,152 | 6,456 |
| Phœnix Distilling Company | 1,174 | 3,522 | Walsh & Kellogg | 3,270 | 9,810 |
| United States Distilling Company | 675 | 2,025 | Davis & Teepen | 820 | 2,460 |
| H. H. Shufeldt & Co | 1,800 | 5,400 | Gherke & Lippleman | 697 | 2,091 |
| Spurk & Francis | 1,200 | 3,600 | Fleishman & Co | 1,242 | 3,726 |
| G. T. Barker | 1,200 | 3,600 | Pattison & Caldwell | 840 | 2,520 |
| Zell, Swabacher & Co | 1,880 | 5,640 | Geo. Davis & Co | 700 | 2,100 |
| Oscar Furst | 700 | 2,100 | James Emmitt | 550 | 1,650 |
| Woolner Bros | 1,220 | 3,660 | Saint Louis Distilling Company | 738 | 2,214 |
| Monarch Distilling Company | 3,333 | 9,999 | Teuscher & Co | 900 | 2,700 |
| J. W Johnson | 900 | 2,700 | Atlas Distilling Company | 1,100 | 3,300 |
| C. S. Clark & Co | 942 | 2,826 | Kansas City Distilling Company | 634 | 1,902 |
| Bush & Brown | 663 | 1,989 | Iowa Alcohol Works | 200 | 600 |
| Great Western Distilling Company | 2,556 | 7,668 | C. J. Pfeffer | 150 | 450 |
| Riverton Alcohol Works | 1,144 | 3,432 | Willow Springs Distilling Company | 1,200 | 3,600 |
| Crown Distilling Company | 609 | 1,827 | Lithia Springs Distilling Company | 450 | 1,350 |
| Hamburg Distilling Company | 1,000 | 3,000 | Iowa Alcohol Works | 300 | 900 |
| Jno. S. Miller, jr., & Co | 1,068 | 3,204 | Dorsel & Wolftang | 290 | 870 |
| Kuhlman & Teepen | 120 | 360 | G. W. Robson & Co | 400 | 1,200 |
| Dair Bros | 585 | 1,755 | G. Holterhoff | 300 | 900 |
| Fairbanks & Dunwig | 1,347 | 4,041 | Freiberg & Workum | 250 | 750 |
| Baker's Son's | 384 | 1,152 | Schofield & Tevis | 700 | 2,100 |
| John G. Hornstein | 250 | 750 | California Distilling Company | 445 | 1,335 |
| John Beggs | 620 | 1,860 | Pacific Distilling Company | 450 | 1,350 |
| Caleb Dodsworth | 653 | 1,959 | | | |
| G. H. Rabe | 561 | 1,683 | | | |

NOTE.—The undersigned does not claim the above to be absolutely correct, but it is as near correct as it could be made with the data in his possession. By adding up the number of bushels mashed in the last nine days in November, and all in December, January, February, and March, and divide the same by 113 days, you will get the average capacity exactly.

GENTLEMEN: In sending you the above assessment, ordered by the executive committee, as you will see by the inclosed proceedings, I am only performing my duty as the executive officer of the association; but it is a pleasant duty, for whatever States and municipalities may do, the Western Export Association WILL NEVER REPUDIATE ITS DEBTS. The most skeptical of its members admit that the association *was reasonably successful*, and the most ardent members, taking into consideration all the circumstances, claim for it a *great success*. The undersigned does not claim that the association was all that it should have been, but when it was formed, the question was not what kind of an association we *would* have, but what kind of an association we *could* have. The exports during the month of February and March were simply *overwhelming*, from causes which you all recognize, which has led to our present indebtedness. You must also remember that for the first thirty-six days the assessment was only *one cent* a bushel, and the assessment up to April 1 has only averaged 7½ cents a bushel, *a not unreasonable heavy assessment*. The executive committee has labored diligently and faithfully for you, leaving their own business and making long journeys, with no other compensation than your generous approval. The future of our business does not look particularly bright, but if we take action in time, we can accomplish hereafter all that the most unreasonable might desire.

Our treasurer wishes me to add as follows:

"Having reported the present indebtedness, and the executive committee, in view of the fact that every distiller in the association, recognizing the benefits he has derived from it, will consider himself in honor bound to pay his proportion of the same, and that the debt should be paid promptly, have passed the resolution as inclosed in the proceedings. This assessment is due and payable April 1, and each distiller can deduct from the assessment any claim for unpaid export bills or capacity run less than 50 per cent. up to and including March 31. If the treasurer does not receive remittance by April 5, he will draw at sight for the amount without further notice."

H. B. MILLER,
*President.*

Q. Now, have you footed the total so that you can give us the exact amount collected under these various assessments up to the present time?—A. Well, the expenditures were $590,563.87.

Q. Up to what date?—A. Up to the 1st day of April.

Q. Since that you have not the statement?—A. No, sir; we have not got our debts paid. It cost us about $130,000 for April.

Q. And that money has been paid, has it?—A. I levied a 10-cent assessment and we collected out of that a little over $90,000, and this last assessment is to cover the deficiency for the month of April and late in March.

Q. Are you still paying out any money for this purpose?—A. O, no; our association is wound up; we are trying to pay our debts; we have some debts; they owe our house a couple of thousand dollars yet that we have not got. We were exporting exclusively.

Q. Where does your treasurer, Mr. Hobart, reside?—A. In Cincinnati.

Q. Then as to the funds since the date here mentioned, both as to the exact amount of receipts and the disposition of them, you cannot state, but Mr. Hobart probably can.

The WITNESS. The disposition of them?

The CHAIRMAN. Yes.

A. O, yes; I know what the disposition was.

Q. I mean can you give us details?—A Well, there were paid for cut capacity that was not operated—and that is a good deal larger item than it was before, because the distillers commenced to cut off capacity as their stock went out; they preferred the twenty cents a bushel to operating their houses—we paid $66,380.96 for maintaining the market. In that is included the salary of the president and treasurer.

Q. What do you pay your officers?—A. They paid us $2,500 for five months' services apiece.

Q. Have you a secretary also?—A. No, sir; I do the clerical work and hire what is necessary.

Q. Who notifies the parties assessed of the amount due, the treasurer or you?—A. I notify them; I mail all those notices; I do all that.

Q. Then if the money is not paid, within what time does the treasurer draw upon them?—A. Within five days.

Q. Suppose they do not pay, what is the penalty?—A. We have no way to enforce it except a man's word and self interest. They have paid well. There are probably only two or three who have not paid, and they are really in a condition where they cannot pay, but we shall get that eventually.

Q. I think I did not understand you, if you stated the total amount of all the assessments. You stated it up to this time. Now, what is the total?

Mr. COCKRELL. All assessments of all kinds?

The CHAIRMAN. Of all kinds.

A. The total amount: Suppose you put down $90,000, that we collected; then the April assessment. Now figure up the last assesment, and that will get at it very near; the two items of the last assessment. Put down $41,000, then add $590,563.87 and $90,000, and add that up, and it will not vary $3,000 for the whole amount. Right here I would like to read a few lines from this pamphlet, entitled "Western Export Association." We did not pay the same bonus all the time; we had to increase on the bonus. The average bonus was 16¼ cents. "This is 8.59 cents per proof-gallon, and if the price of exports regulated the price of domestics (and who can dispute it?), then we have gained on the product from November 21 to April 1 22,000,000 gallons; $1,890,800." Now, this was not profit; it was the difference between what we lost and what we gained. "Expense, chargeable to the above members, $562,144.14." I did not take California nor Kentucky in this estimate. "The net gain to the foregoing members, $1,328,655.86; average net gain per bushel of half capacity, $29.38," which the distillers think a very fair operation.

By Mr. COCKRELL:

Q. Why did your association wind up?—A. It was only commenced temporarily. We feed largely stock—cattle and hogs. We have in our distillery 1,200 head of cattle and 1,300 hogs, and others had a great deal more. We could not cut down to half capacity. It was impossible, without great loss in turning out the cattle, and it was supposed before the 1st of May we could turn out sufficient cattle so that we could run without an association; that if men would act wisely and prudently there would be no necessity for an association; and so the association went out of existence on the 1st of May. We find that men will not be prudent without there is some power over them, and we are about adopting the same plan that we worked on last winter.

By the CHAIRMAN:

Q. Your trouble arose from overproduction at the time?—A. Overproduction entirely, and by losing our export trade; the same trouble that these Kentucky gentlemen have, only they do not try to help themselves, while we do.

Q. Is it to the interest of your line of distilling to have this bill passed which is now pending?—A. It is a common interest indirectly. Here is this immense overproduction in the country, amounting to 50,000,000 or 60,000,000 gallons. If the goods should be sacrificed and thrown on the domestic market all at once, it would stop every distiller in the State of Illinois. It would ruin our business; we could not make any calcu-

lation upon it. As an original proposition, with very few exceptions, we do do not need any bonding period at all, more than a few months.

Q. Your people were opposed to it in 1880, when a proposition was made to pass the Carlisle bill?—A. No, sir; at that time I had the position Mr. Shufeldt has now; I was president of the National Distillers' Association. It was a compromise measure between Kentucky and ourselves. We were not opposed to it. We regarded the principle as just that goods should be taxed only when they enter into consumption.

Q. But the Pekin and Peoria distillers were opposed to it?—A. Well, they are a curious set down there. It will not do to bet on them.

Q. Well, indirectly, then, it is a benefit to you in order to prevent that being thrown upon the market?—A. Certainly. I have given a great deal of study to this matter, and I have cautioned my Kentucky friends—the Commissioner of Internal Revenue, in his report, cautions them—against this production, and I have written to a great many of my Kentucky friends showing what they were doing there, and showing what the difficulty would be, and if these goods should be forced out upon the market there was not money enough in the banks of Kentucky to pay the taxes on these goods.

Q. Would they sell for the taxes if they were forced upon the market?—A. They would always sell for the taxes. If necessary, we would close up our distilleries and buy them.

Q. Could you do that?—A. Certainly.

Q. How could you manage that now, with all of your cattle and stock on hand, with the cost of your distilleries? Suppose this was suddenly thrown upon the market for the taxes, would you not have about all that you could do to protect yourselves?—A. That is what we are organizing for. We are not going to be caught in the winter with our stables full of cattle when we know these things will be forced upon the market.

Q. So you are preparing yourselves to buy?—A. Yes, sir; we are preparing.

By Mr. COCKRELL:

Q. Have you nearly got rid of your cattle and hogs?—A. They are nearly all out.

Q. I should think you could sell them at the prices they have been commanding recently?—A. There is one distiller in Peoria who told me he had owned probably 2,800 head and had cleared $75,000 on his cattle. The enormous prices would neccessarily call them into the market. The Western distillers are all coming here with fat on their ribs.

Q. I see cattle are as high as 8 cents, I believe, in Saint Louis.—A. Well, distillery cattle sell at 8½ and 9.

By the CHAIRMAN:

Q. Then you are interested really with the Kentucky distillers in the passage of this bill?—A. Yes, sir. I know two parties who own 4,000 barrels of that whisky in bond now, men of wealth, worth fifty or seventy-five thousand dollars; but it would embarrass them very seriously if they had to take it out. You force that Kentucky whisky out at once, and you will make us close up our distilleries. That destroys a market for one million bushels of grain a month, and you will ruin half the traders in the country. Whether you could do that, take that risk, without materially interfering with the industry of the country, is more than I can say.

Q. Tell us how you will improve by extending the same period which has brought about these results.—A. If you extend this, I do not beeve the distillers would get into a difficulty and come here asking

Congress for relief. When that Carlisle bill passed we were all satisfied, and supposed we would not have to trouble Congress for a long time; but here is the situation we have got into now. I think if you extend it five years it would not be the same thing over again. Everything has a boom. George Law will never get his Mississippi bubble going the second time. It went first rate the first time. There are a thousand things that can be played the first but not the second time. Now, these gentlemen all over the country were buying these Kentucky goods. It was a big boom and a crazy speculation. The Kentuckians—some of them—were crazy. You may be sure you could not now get an outside man to buy a barrel of whisky in bond. You could not get another boom in the next half century. The consequence is, what whisky is made in Kentucky bears on the purse of the distiller and the credit he has in the bank to borrow money.

Q. You probably could not under the same law; but could you not if there were an unlimited extension? Now this boom was gotten up on the extension. That had definite limits, and they knew precisely when the tax would have to be paid, but under the new one there would be an indefinite time. They need never pay until they found a purchaser. Do you not think that would stimulate a boom?—A. No, I do not think so, for five-year whisky does not improve any. There is no object in holding it longer than five years. I do not think that whisky improves after that. If a man has five-year whisky, that is about as old as he wants. I drink whisky that is said to be fifteen years old. I am not a great judge of whisky myself, because I am too cunning to drink a great deal of it myself.

Q. I want to ask you the difference between the three things you have named—cologne spirits, alcohol, and high wines.—A. Right here, Senator, let me disabuse you of one thing. Generally, when spirits or whisky is spoken of, the whole thing is connected with men's stomachs. Now, the fine whiskies produced in the country—take the States of Kentucky, Pennsylvania, Maryland, and Tennessee—and I do not suppose there were, out of a consumption of 68 million gallons, 17 million gallons of fine whiskies that went on the domestic market as a beverage. Now, Kentucky is pleased to say that out in the West we make rot-gut. Now, it is impossible that the balance of the 68 million gallons should go on the market as a beverage. A great portion of it goes into the arts and the trades. Mr. Kelley, of Pennsylvania, who is in the other House, will tell you—and he has given the matter great study—that one-half of it goes into the arts and manufactures. Now, the alcohol is 94 per cent., 188 proof. That is used in all branches throughout the United States. It is used by painters in cutting shellacs; it is used by dyers in print works by calico manufacturers; it is used in varnish; it is used for cutting gums by druggists, and everything. In fact there is scarcely an article on your body but what is covered with alcohol. This alcohol is unfit for beverage of any kind.

Then there are pure spirits, French spirits, and cologne spirits. The difference between French spirits and cologne spirits is that where we transport it long distances we concentrate it to make cologne spirits 188 per cent. and make pure spirits only 100 per cent. That saves us half the transportation expenses. They reduce it with water, bring it down to proof. This is the basis of all compounded liquors. Then they take these odorless, colorless spirits, and the rectifiers have different formulas by which they compound it. They put with it old rye whisky if they want to make rye whisky, flavor it with bourbon if they want to make bourbon; they add frequently a little New England rum to it; they add

Madeira or sherry wine to it; they add peaches or prunes. There is not a deleterious article that goes into it. We divest it of all fusil oil, and in my opinion it is a great deal healthier than the mountain dew whisky of Kentucky.

Q. Now state why it is that the mountain dew, as you call it, sells for so much more per gallon than yours?—A. Well, they have to get a boom on it. Now, take the hand-made, sour-mash, fire-copper distilled, the yield is not over about twelve quarts to the bushel, while we are getting sixteen, and even the steam-copper whisky does not yield within two quarts of what we are getting, but then there is no doubt it improves by age.

Q. Could it not be put through the distillation process that you do yours and made of the same value at once as it obtains by ripening?—A. O, yes; but it is an entirely different article; they do not do that. In our association we do not ask Kentucky to connect themselves with us. We have nothing to do with the fine whisky States. We ripen our own mash.

Q. They are not members of your society at all?—A. No, sir; we do not care about them.

Q. And your interest in their extension is merely that their large surplus shall not be thrown upon the market?—A. To injure us and injure the general trade of the country. There are men, like Mr. Shufeldt, who has a jobbing business of $3,000,000 a year. I do not know how much credit he runs, but I presume as much as $500,000. Now, you ruin those dealers throughout the country. You cannot tell where a man stands with his credit; and banks all over the country hold these credits.

Q. Has your association ever taken any action with reference to the passage of this bill?—A. Mr. Shufeldt is our officer of the national organization, and we have confidence in him and trust everything to him.

Q. I am speaking of yourself.—A. O, no; nothing at all.

Q. You have taken no action whatever?—A. No; never discussed it even.

Q. And, of course, have contributed nothing to the expense of it, within your knowledge?—A. No, sir.

Q. Not to the expense of persons coming here or attorneys?—A. Nothing at all. It is an entirely different thing. Ours is a business proposition; a wise one. It meets the approval of the Internal Revenue Office here.

By Mr. COCKRELL:

Q. I want to ask if this overproduction was not caused also in part by the dealers buying so largely from the distillers?—A. Certainly; the overproduction in Kentcuky of the fine whiskies. That had nothing to do with our overproduction. The immense capacity we have, and being cut short 16,000,000 gallons in the export trade, that has made our overproduction; but the dealers buying, of course a Kentucky man would sell the last gallon he could make, if he could get a profit, if there are fools enough on the outside to buy it.

Q. It seems there are a good many who did buy, did they not?—A. Yes, there are more in the country than I supposed there were. You get up a railroad from here to the moon and you will find fools to take stock in it. We are like sheep, where one goes they all go.

Q. Well, if these distillers in Kentucky, Pennsylvania, Maryland, and Tennessee could not have obtained sale they would not have gone to the extensive overproduction they have, would they?—A. They would not have had the money. It requires money to make whisky.

Q. By whom is this immense amount of whisky owned?—A. It is owned by every town and State in the Union. A saloon-keeper has five barrels in bond who never thought of having any. You can buy a gallon of whisky for sixty-five cents, and let it lay three years and in that time it will be worth two dollars, and they all rushed in. The bait was so alluring that they just took it, bob, sinker, and all, all over the country.

Q. Do the distillers hold a little of that?—A. They own a little. I am sorry they did not make money out of it. Wherever they found a chimney they would go and build a distillery right to it. If a house burned down and the chimney was left standing they would build a distillery right to it.

Q. Suppose there was no extension of the time of bond for that kind of spirits what would be the effect of it?—A. I could not tell you what the effect would be. It might create a panic in the whole business. You cannot injure one limb of the human system without injuring the whole body. You cannot tell what effect it would have. You have had panics from less causes than that. I think it would be a dangerous experiment.

Q. In no event would the government lose anything because there would be no question but what the whisky would bring the government tax?—A. No; we can give you $20,000,000 bonds and take all the whisky you have got to sell at ninety cents a gallon. The government don't lose a cent.

Q. What effect would it have upon the revenue for the coming fiscal year, commencing on the first of July, if it were extended to five years?—A. It will not have any effect on the revenue. If you force it out you will take $25,000,000 more one year and then $25,000,000 less the next. You cannot force consumption.

Q. You think there will be no large diminution in the revenue?—A. O, there will not be any diminution. General Raum makes the figures, and where he takes the $135,000,000 he comes within a million or two of the actual result, and he could come a little closer, only he always wants to be a little below. Now, he is so well versed he can tell you, if these matters are not disturbed, how much money you are going to get from the first day of the next fiscal year from this source, taking everything together. There is no business in the world where you can run an association as easy as this. You tell a man to mash a thousand bushels, and if he reports a thousand we get the report of the collection of the district, and if he mashes ten bushels more we find him out. He cannot cheat. The whole system is perfect.

Q. You say your association raised no money for the purpose of any influence of any kind?—A. That association does not care anything about your legislation. It is the overproduction from our immense capacity that we have been trying to get rid of. Congress cannot help us in that respect. We have, of course, an indirect interest in it.

Q. But there was no money raised by your association to help forward this bill in any way?—A. Not even to pay a man's expenses here. We never discussed it in our association. You will see the name of every man we paid our money to, and the name of every man who contributed money. Look over it; it was a plain business arrangement between business men to evade ruin by our own acts of folly by the immense overproduction and overstocking our barns, and we have faith that we have got straight with it. This association has no interest in any legislation; we do not ask any. Only as distillers, we have that indirect interest in it.

By the CHAIRMAN:

Q. Was there ever any arrangement or understanding between your association and the other, that you should seek a reduction of the tax and they an extension of the bond?—A. No, sir.

Q. Does your association desire a reduction of the tax?

The WITNESS. In favor of it?

The CHAIRMAN. Yes.

A. Well, there is some difference of opinion; I being in the export trade entirely, myself never could see where it is going to benefit me any to reduce the tax. Mr. Shufeldt, being in the jobbing trade, has to trust his goods all over the country. Of course if the tax is reduced to 50 cents he trusts only 50 cents where he now trusts 90. But I have been a strong advocate of the reduction of taxes just at the present time. We stated to the Commissioner of Internal Revenue, and also to Congress, that as long as the government needed money we would not ask reduction; we would pay our proportion cheerfully; but, as I keep up with the figures, I see you are taking in a great deal more money than there is a necessity for. It is true you are getting away with a good deal in the shape of pensions and rivers and harbors.

Mr. COCKRELL. We are getting away with about $150,000,000 of it this year in paying debts.

The WITNESS. Well, your debts will be paid at this rate in about three years, and you cannot pay any more unless you go on Wall street and buy bonds at a premium. Now, I do not suppose we ourselves would have asked for a reduction, but we could not help it. There were three or four bills introduced in Congress for the reduction of the tax, and we preferred to take charge of that ourselves, because this agitation was hurting our business. Then the tariff men—of course there is so much money coming in, and the tariff men do not want to take it off of the tariff, and as I have always been educated in that doctrine, as a Henry Clay Whig, I am in favor of a protective tariff. I have always advocated a reduction of the tax on whisky.

Q. For the benefit of the tariff?—A. Yes.

Q. You made a kind of a combination with the tariff men?—A. O, no; they seduced us and then went back on us. After they seduced us they jilted us.

Q. When they got the tariff-commission bill through they were not so much in favor of the reduction of internal-revenue taxes?—A. O, no; they were tearing everything to pieces for the reduction of internal revenue taxes until they got what they wanted, and then they left us out in the cold.

Q. Do you know anything about what proportion of the whisky in bond has been sold by the distillers to the traders?—A. I do not suppose they have sold a great deal more than they did last year. The consumption in the United States for the fiscal year ending on the 1st of July, 1881, was 6,000,000 gallons greater than the year before, and the increase of Kentucky whisky was 144,000 gallons in that 6,000,000 gallons. It has its regular trade and you cannot force it.

Q. No, you did not understand. I mean what proportion of the product now in bonded warehouses has been sold to the traders in bond?—A. Oh, that I don't know, only from hearsay. The general impression I think is that probably three-quarters of all of it is held by outsiders—probably more. Colonel Wharton would know better than I do. They have given that a study; I have never given that a study. I have known this over production was going on.

Q. You say that there would be no trouble in organizing to give bonds

for $20,000,000 to take all the whisky in bond, if it were thrown on the market. Do not you think that would be a pretty big contract?—A. No, sir; you must remember that that is scattered over three years yet.

Q. No, but I am supposing that to be thrown on the market all at once.—A. There might be some danger then, but still I do not think there would be.

Q. You think an organization could be made strong enough to control it all?—A. Yes. The United States consume 6,000,000 gallons a month. Now if that was so low, we would have to shut all our distilleries down. At 6,000,000 gallons a month it would only take about eight months to consume the whole.

Q. Would it not be a very great loss to stop all your distilleries?—A. Yes. But we would have to stand it.

Q. And the association of distillers having to stand such a loss, would they be in a good condition to invest $70,000,000 in whisky?—A. That is the object of reorganization; to keep watch.

Q. Suppose that time should come that the $70,000,000 or $100,000,000 tax should be collected, and an organization was made to buy it in, would it not be to their interest to buy it just as cheap as they could, and would not they control the market so as to fix their own price?—A. O, that is an imaginative case.

Q. That is the case I want your judgment on.

Mr. COCKRELL. I understand the whisky now in bond has gone into bond at different times and could not be thrown on the market at once.

The CHAIRMAN. I am contemplating the passage of this bill.

A. There could not be a combination to buy all the whisky and then force it on the market. No; such a combination as that could not be formed.

Q. If you could form a combination by which you could buy in this vast amount now, it occurred to me that you could combine to control the market about as you pleased?—A. Well, we would be compelled to buy it; we would shut down our distilleries rather than make it at a loss. Mr. Shufeldt has got a custom of $3,000,000 a year, or more. Now, he could not let that custom, that has taken twenty-five years to build up, go away all at once, and he could not make the whisky in his distilleries; that would be impossible. He would be compelled to buy this Kentucky whisky and dump it, and remanufacture it, and get it as near his style of goods as possible to keep up the trade. We have got no money in the jobbing business. I live in a favored country, where I find it to my interest to export all the product.

EDWIN STEVENS sworn and examined.

By the CHAIRMAN:

Question. What is your residence?—Answer. Cincinnati.

Q. What is your business?—A. Commission merchant.

Q. Are you connected in any way with the distilling business or trade?—A. Yes, sir; we handle the product of some eight or ten distilleries.

Q. As commission merchants?—A. Yes, sir.

Q. Are you connected with the national organization in any way?—A. I am treasurer of the National Distillers' and Spirit Dealers' Association.

Q. How long have you been treasurer?—A. Since October, 1880.

Q. What is the extent of that association in numbers?—A. It comprises a membership of between five and six hundred, from Maine to California. The membership extends all over the country.

Q. What are the qualifications for membership?—A. To be engaged in the business of distilling, rectifying, and compounding, commission merchants, &c.

Q. Have you by-laws or constitution, or any organization?—A. Yes; there were by-laws, but I do not happen to have a copy of them.

Q. What was the purpose of your organization originally?—A. Simply for the protection of the distilling interest.

Q. Protection in what way?—A. Well, it was kept up probably to watch legislation to some extent.

Q. So that your interest might not be injured—might be protected by proper legislation?—A. Yes, sir.

Q. Is the membership increasing?—A. No, sir.

Q. What was your first effort in the way of legislation?

By Mr. COCKRELL:

Q. (One moment, Mr. Chairman.) When was that organization first completed?—A. It was first formed in October, 1879.

By the CHAIRMAN:

Q. Then did you make any effort for legislation in that year, or the following?—A. No, sir; nothing particular. The organization went into existence at that time; and we had here, probably in December of that year, the secretary of the association to watch the interest.

Q. Who was the secretary?—A. Dr. Rush, of Chicago.

Q. Has he been here this winter?—A. I think he has; I do not know.

Q. Do you know whether he is here now?—A. I do not think he is in the city. I don't know how that is.

Q. Does your object as to legislation include State legislatures as well as Congress?—A. It does, to some extent.

Q. But mainly with reference to national legislation?—A. Yes, sir.

Q. You were represented in 1880, when what is known as the Carlisle bill was passed?—A. Yes, sir. I think Dr. Rush was here at that time.

Q. Were you here?—A. No, sir.

Q. You have never been to Washington on that account?—A. No, sir; not in the interest of the association.

Q. How is your association supported financially?—A. By annual dues.

Q. What are those dues?—A. It varies from ten to thirty dollars. Wholesale dealers pay $10; distillers of a certain capacity $20; and over a certain capacity $30.

Q. What are the total annual receipts of your organization from these sources?—A. The total receipts for the year 1880 and 1881 were about $4,600; for 1881 and 1882, to this date, they were about $3,400; about $8,000 in all.

Q. Have you made any assessment, or received any contributions of any kind?—A. No, sir; not a cent.

Q. You have received no contributions whatever?—A. No, sir.

Q. Have the individual members received contributions, so far as you know, to aid them, through the treasurer, or otherwise?—A. They have not, through the treasurer.

Q. Do you know that they have otherwise?—A. No, sir; I do not.

Q. Do you know anything about it; have you heard anything on that subject?—A. No, sir.

Q. Have not heard that they had received any?—A. No, sir.

Q. Did you notice a communication in one of the papers, some time ago, that Mr. Atherton had held a meeting in Louisville expecting to

raise $5,000 for this purpose, and only raised $1,200, and adjourned the meeting hoping to raise more?—A. I did not see that, sir.

Q. Have you the books of the concern here?—A. I keep the accounts of the association in my regular ledger connected with my business. I did not bring it with me, nor did I bring a copy. I did not know the object of my summons here, or I should have done so. I am giving you nearly the exact figures.

Q. Can you state to whom the money has been paid out?—A. The association pays the president $600 a year salary. They pay the secretary $1,800 a year, and the treasurer $300. The balance of the expenditures are for printing bills, the expenses of officers traveling backwards and forwards from place to place.

Q. What do you mean by "printing bills"?—A. Furnishing proceedings of each meeting, bank drafts, and such things as that, as they are required by the officers and members.

Q. $600 for the president, $1,800 for the secretary; what for the treasurer?—A. $300.

Q. Do you not pay the expenses of people who come here to carry out the very purposes and objects of your organization, to wit, to influence Congress?—A. Yes, sir.

Q. Are they paid out of this fund you speak of?—A. Yes, sir.

Q. Is there no other fund out of which they are paid?—A. Not that I know of.

Q. Who have you employed this session to look after this bill now pending?—A. I have paid but one bill so far that I know anything about. It did not come in the shape of a bill. It came in the shape of a draft from Dr. Rush for $200.

Q. Is that the only bill that has been presented?—A. Yes, sir; that is the only bill I have paid.

Q. Have you not employed anybody to look after your interests here?—A. No, sir.

Q. Does it not strike you that it is rather an inefficient organization, organized for the express purpose of promoting legislation, that you have only paid out $200?—A. It is not as efficient as the Western Export Association. I am perfectly willing to admit that.

Q. Who pays the expenses of these gentlemen here; do you know?—A. No, sir; I do not. I have no authority to pay them anything. I have paid bills upon the authority of the president and secretary. If they present bills that are certified to by those officers, I pay them, if I have the money. I pay nothing out without their voucher.

Q. But you have received no voucher from them of any kind?—A. No, sir.

Q. And no notice that any funds would be required, with the exception of the $200?—A. No, sir.

Q. Have you reason to expect that any bills would be presented for the promotion of this bill at this session of Congress?—A. Well, possibly some bills may come in, and very likely they will not be paid, because there will be no funds to pay them with.

Q. Well, we wanted to know if you had any reason to expect any?—A. No, sir; I have no reason to expect any.

Q. What amount of funds have you on hand now?—A. A little less than $1,300.

Q. How much did you say the total was last year?—A. About $4,600.

Q. Up to what time?—A. That was the full year.

Q. What is your year?—A. From October to October.

Q. Has there been any effort to increase the membership of the as-

sociation and increase the funds this last year?—A. Yes, sir; some individual effort; it has not been very successful.

Q. You say that it has not been very successful?—A. It is principally from this section of the country. There has been some individual effort.

Q. You say that it has not been very successful?—A. No, sir.

Q. How is your organization represented in Washington; by anybody voluntarily, or otherwise?—A. Dr. Rush is the only gentleman I know who has represented the association here. Probably Mr. Shufeldt was here last winter. I do not know. I am not certain about that. He is the president of the association.

Q. Can you make us a statement of the entire receipts and payments, all that has been paid out for the last year?—A. Yes, sir; I can, when I get home, make it out and forward it.

Q. The statement you say you will forward is to be forwarded under the oath you have taken here? You desire it to be sworn here as if delivered at present?—A. Yes, sir.

By Mr. COCKRELL:

Q. You state that your books are kept correctly, and they show the exact amount received and the exact amount paid out, and to whom, and the days on which they were paid?—A. Yes, sir.

By the CHAIRMAN:

Q. And you will furnish us a transcript of that?—A. Exactly. I will give you an exact copy of my ledger.

By Mr. COCKRELL:

Q. You never have been here in Washington representing your association?—A. No, sir; not at all.

Q. In whose favor was that bill of Dr. Rush's presented? Was it in his own favor or in favor of some one else?—A. I think it was payable to the order of a man named Squire. I presume he is some banker here; I don't know. It was indorsed by him, and came from a bank, regularly, for collection. That is my recollection of it.

Q. That was $200?—A. $200.

Q. Have you any information that any other sums have been promised?—A. No, sir; none whatever. I understand your question in regard to paying moneys includes this year. Is that it, or does it include all the time since I have been treasurer?

The CHAIRMAN. Well, you may as well make up the entire account. What I want to know is the amount of money you had on hand, for instance, last October a year, and what you have paid since, and to whom.

The WITNESS. Exactly. I will give you an exact statement of the amount of moneys paid out and to whom paid.

By Mr. COCKRELL:

Q. Do you know of any one applying for employment, representing that they had influence?—A. No, sir.

Q. Have you ever heard from any one else that certain parties representing them had, and that they could wield an influence if they were employed?—A. No, sir.

THURSDAY, *June* 1, 1882.

JOHN M. ATHERTON sworn and examined.

By the CHAIRMAN:

Question. What is your residence?—Answer. Louisville, Ky.

Q. What is your occupation?—A. I am engaged in the manufacture and sale of Kentucky whiskies; in the wholesale grocery trade.

Q. You manufacture and trade in whisky both; so that you occupy both relations to it?—A. Mainly in the manufacture.

Q. What is the extent of your manufacture?—A. Well, we vary one year with another, according to the demand for Kentucky goods.

Q. How much last year?—A. I think about 45,000 barrels at our different distilleries for the year just ending.

Q. What, during the last year, has been the average price per gallon of the goods you manufacture?—A. We make two grades of goods; what are technically known as sweet-mash goods, and sour-mash goods. The former average price is about 40 cents per proof gallon, original gauge, in bond; and the sour mash from 50 cents to 55 cents per proof gallon.

Q. Of which do you make the largest quantity?—A. We make about the same quantity of each.

Q. How is it with the distillers in Kentucky, and those generally who make that sort of whisky; of which do they make the largest quantity?—A. There are more gallons of sweet mash than of sour mash made.

Q. Can you give us an idea of about how much more?—A. Not with any degree of accuracy. I should think, though, probably two-fifths sour mash and three-fifths sweet mash. The larger distillers throughout Kentucky all make more sweet-mash whisky than sour-mash. The smaller distillers—those who are both distillers and farmers—without exception make sour-mash whisky.

Q. Now please state the value or market price of those whiskies, respectively, at three, five, or eight years of age.—A. That would be difficult to do, because the price varies so much, according to the quantity in the market, just like corn or wheat, or any other article of merchandise; the same laws that control one, control the other.

Q. What would you consider the average natural increase of value of the two?—A. Well, sweet-mash whiskies are seldom held to a greater age than four or five years; the bulk of the sweet-mash goods are sold before they reach three years. The sour-mash goods are held longer, because they are a finer quality and improve more with age. Take 1879 goods; now the 1879 sweet-mash goods in bond are worth about a dollar per proof gallon, sour-mash goods from $1.50 to $1.75 in bond. Then take the year younger, and sweet-mash goods are worth about 65 cents to 70 cents, and sour-mash goods about a dollar.

Q. Now you say the sweet mash does not increase much in value after three years?—A. The sweet mash don't increase so much in value as the sour-mash goods after the three years.

Q. Do they increase in value at all?—A. Scarcely enough to compensate for carrying them. They do increase somewhat, of course, but there is expense connected with carrying these whiskies.

Q. What would be the worth of the sweet mash, at three years, now?—A. About $1, according to the reputation of the brands.

Q. That is in bond?—A. In bond, original gauge.

Q. Is that higher or lower than it was six months ago?—A. I do not believe there has been much change in six months.

Q. What would the sour mash be worth?—A. It would be a fictitious

price because the quantity of that whisky is exceedingly limited throughout the United States.

Q. Is there any price for it?—A. No, sir; the supply is so limited that the price would be purely nominal.

Q. You do not mean the price would be nominal, but it would be high?—A. I mean that you cannot get any transactions upon which to base a quotation.

Q. Can it be bought at all?—A. Not with any degree of certainty. If I wanted ten barrels of sour-mash whisky, ten years old, I would scarcely know where to go to get it.

Q. Is it really of more value than the three years old?—A. Of course it is. It depends upon what you consider an element of value. It costs very much more money to hold the whisky until it reaches five years old than it does when it is three. Of course there is the increased leakage, the interest upon the investment, the insurance, the storage, and all expenses connected with the whisky up to that time.

Q. Does it increase in quality, and is it more desirable for consumption, after three years?—A. Oh, by all odds; and after five——

Q. It continues to increase how long?—A. That depends a good deal upon the manner in which it is taken care of and the manner in which it is made. The best whiskies made in Kentucky, those that are made upon the sour-mash plan, are believed by connoisseurs and judges to improve in quality until eight and ten years old.

Q. What could you sell five or ten years old sour-mash whisky for now?—A. Of course it would have to be sold free. I suppose five years old whisky to-day would bring $4.50 a gallon.

Q. Would it bring more if it were eight years old?—A. Of course it would bring more. It would bring just what you would ask for it, if you could find a buyer. A man who wanted whisky of that age would give just what you asked. There is no competition in that class of whisky to-day.

Q. But, in your judgment, you could sell five years old whisky for $4.50 to $5?—A. Yes, sir; all good brands.

Q. What is the cost of manufacturing a gallon of sweet-mash whisky?—A. Well, that you see at once would vary according to the price of the material out of which you make it.

Q. Have you any idea of what the cost was last year?—A. The cost of sweet-mash whisky during last year would range about 32½ cents a gallon. The margin of profit on sweet-mash whisky during the past year has been very small, owing to the increased cost of grain, and, to some extent, to the increased cost of labor.

Q. What would you estimate the cost, during the last year, of the sour mash?—A. Well, the price of the sour mash varies slightly now. The sour-mash whiskies can be bought in Kentucky for 50 cents.

Q. I mean the actual cost.—A. I am trying to give the data upon which we can calculate. There is a large range in prices in sour-mash whisky, ranging from 45 to 75 cents. The cost is varied to some extent; as the yield varies of course the cost varies. I suppose the average cost of sour-mash whiskies would not be far from 40 cents a gallon.

Q. Do you make that of rye?—A. Sour-mash whisky is made almost exclusively of corn.

Q. How much will a bushel of corn produce?—A. That varies from 3 to 3¾ gallons. That is the range.

Q. Can you make more of the sweet mash from the corn?—A. Yes, sir; we get a larger yield of sweet mash than sour mash.

Q. About how much?—A. A half a gallon. Our distillers generally make about half a gallon more.

Q. What do you call the whisky made of rye, rye whisky?—A. Yes, sir; rye whisky. Whiskies that are made of corn or rye, or mixtures of these two grains, are called bourbon.

Q. What is that worth per gallon in bond?—A. That is worth generally what sour-mash whisky is worth, though that varies too; you find some fancy brands.

Q. Does it not improve in value from age as the sour mash and other does?—A. Yes sir; I think it does. I am not so familiar with ryes, because they are made more in Pennsylvania and Maryland—in the east here. Kentucky makes a good deal of rye whisky; but her product is very largely bourbon. They are making more ryes latterly than formerly.

Q. You apply the term bourbon to sour mash and sweet mash both?—A. Yes; the general trade does. Now, in Kentucky the merchants, in speaking of them, generally call them by those trade names—the sweet-mash whisky meaning a certain process, and the sour mash meaning a certain process, but the country generally designates the whisky as "bourbon."

Q. Are you connected with any organization of any kind in the interest of the whisky trade?—A. Yes, sir.

Q. What is it?—A. I am a member of the National Distillers' Association, and a member of the Kentucky Distillers' Association.

Q. The National Distillers' Association is the one of which Mr. Shufeldt is president?—A. I have no connection with the Export Association.

Q. Mr. Stevens is the treasurer of that—the National Distillers' Association?—A. I believe he is. I do not know Mr. Stevens, and have never attended a meeting of the National Distillers' Association. The only member of that organization with whom I am acquainted is Mr. Shufeldt.

Q. What is the other organization of which you speak?—A. The Kentucky Distillers' Association, which is an organization confined exclusively to the manufacturers of whisky in the State of Kentucky.

Q. That does not extend out of the State?—A. Not at all.

Q. How large an association is that?—A. Well, I think there are some 30 or 40 members. I have here the report of the proceedings, and the constitution and by-laws of the Kentucky Distillers' Association (handing it to the chairman.) That embraces about all that has been done. It is almost a nominal association. They have met very few times, and transacted very little business. That embraces the names of the members at that time; there may have been some little changes—no material changes; a fellow may have been dropped out because he did not pay his annual dues.

Q. When was that organized?—A. The date is on there; I believe it was in 1880.

Q. What are the terms of initiation?—A. They are $25 I think.

Q. Annually?—A. Annually; yes, sir.

Q. Is there any authority to assess under this?—A. For the expenses of the association. You will see that upon the executive committee there are conferred certain authorities—to assess and raise moneys for the expenses of the association where the annual dues are insufficient.

Q. What are the expenses of your association?—A. We have no expenses except to pay the secretary and attorney, printing matters connected with the organization in the State. So far as I remember, the

only expense that we have incurred has been the employment of Colonel Wharton here this year.

Q. Colonel Wharton, then, is employed by the Kentucky Distillers' Association?—A. He is employed by the executive committee of the Kentucky Distillers' Association.

Q. What salary do you pay Colonel Wharton?—A. We agreed to pay $5,000.

Q. For what length of time?—A. For one year.

Q. What were to be Colonel Wharton's principal duties?—A. He was to assist in preparing and presenting the bill for the extension of the bonded period to the Committee on Ways and Means and the Finance Committee of the Senate; and, further more to attend to any business which the distillers in Kentucky, belonging to the organization, might have with the Commissioner of Internal Revenue. There are claims constantly coming up, and assessments, and various matters which require—in fact we have intended for the last year or two to employ an attorney here to attend to our business with the departments, but have never done it, because we have not had money to pay for it.

The CHAIRMAN: I will read section 2, of Article II, of the by-laws of the Kentucky Distillers' Association:

The Executive Committee shall have the general supervision of the affairs of the association; they shall have power to appoint members of the association to solicit such legislation as may be desired and approved of by the association or agreed to by a majority of the committee; they shall have power to employ such agents or agencies as the majority of the committee may agree upon; they shall fill any vacancies of officers or members of the Executive Committee caused by resignation or otherwise, to serve until the next regular or called meeting; they shall have power to assess and collect such sums as may be necessary to defray the expenses of the association by making pro-rata assessments on the number of bushels mashed, as shown by the surveyed capacity, but under no circumstances be based above five hundred bushels on any one distillery.

Q. That was adopted in June, 1880, as shown in this pamphlet. Have you ever made any assessments under that association?—A. We attempted to make assessment to pay Colonel Wharton, but I think it has only been imperfectly carried out, and probably responded to by distillers in one or two sections of the State.

Q. How much have you raised by that assessment?—A. Well, I have here a detailed sworn statement of the treasurer of the association running back for more than a year. The present treasurer received it from his predecessor. This shows the cash receipts and disbursements of every cent that has been received by the association, from whom received, and to what purpose it has been applied; and the amount now remaining in the treasury. It is a sworn statement of the secretary and treasurer. The statement is as follows:

*W. H. Jacobs, secretary and treasurer, in account with Kentucky Distillers' Association.*

| | | | | DR. |
|---|---|---|---|---|
| 1881. | | | | |
| Apr. | 30. | To cash of John Callaghan, secretary | | $371 50. |
| | 30. | To Murphy, Barbour & Co., distillers | $25 00 | |
| June | 17. | To Hill & Hill, distillers | 25 00 | |
| | 17. | To Owensborough Distilling Company, distillers | 25 00 | |
| July | 2. | To Hill & Perkins, distillers | 25 00 | |
| | 15. | To E. P. Millett & Co., distillers | 25 00 | |
| | 25. | To Hofsheimer & Sellegar, distillers | 25 00 | |
| Aug. | 11. | To A. T. Smith & Co., distillers | 25 00 | |
| Oct. | 10. | To A. Wood & Co., distillers | 25 00 | |
| | | | | 200 00 |

| | | | | |
|---|---|---|---|---|
| Nov. | 18. | To T. J. McGebben, distiller | $25 00 | |
| | 18. | To McGebben & Bramble | 25 00 | |
| | 18. | To Hofheimer & Sellegar | 25 00 | |
| | | | | $75 00 |
| Dec. | 10. | To Boone Distilling Company, distillers | 25 00 | |
| | 10. | To E. H. Taylor & Co., distillers | 25 00 | |
| | 10. | To W. H. Millett & Co., distillers | 25 00 | |
| | 10. | To R. Monarch, distillers | 25 00 | |
| | 16. | To M. V. Monarch, distiller | 25 00 | |
| | 17. | To Owensborough Distilling Company, distillers | 25 00 | |
| | 22. | To the Newcomb Buchanan Company, distillers | 25 00 | |
| | 22. | To Anderson Distilling Company, distillers | 25 00 | |
| | 22. | To George C. Buchanan, distiller | 25 00 | |
| | 22. | To A. T. Smith, distiller | 25 00 | |
| | 22. | To A. T. Smith, distiller | 25 00 | |
| | | | | 275 00 |
| | 22. | To New Hope Distilling Company, distillers | 25 00 | |
| | 22. | To S. Van Hook, 1881, distiller | 25 00 | |
| | 22. | To S. Van Hook, 1882, distiller | 25 00 | |
| | 22. | To Redman Distilling Company, 1881, distillers | 25 00 | |
| | 22. | To Redman Distilling Company, 1882, distillers | 25 00 | |
| | 22. | To Boone Distilling Company, 1882, distillers | 25 00 | |
| | 22. | To T. J. Monarch, distiller | 25 00 | |
| | 22. | To William Tarr & Co., distillers | 25 00 | |
| | 23. | To W. S. Hume, distiller | 25 00 | |
| | 23. | To J. G. Mattingly & Sons, distillers | 25 00 | |
| | 23. | To Charles L. Mills, distiller | 25 00 | |
| 1882. | | | | |
| Jan. | 6. | To Melwood Distilling Company, distillers | 25 00 | |
| | 6. | To Melwood Distilling Company, distillers | 25 00 | |
| May | 23. | To Hill & Hill, distillers | 25 00 | |
| | | | | 350 00 |
| | 23. | To the J. Matherton Company, distillers | 25 00 | |
| | 23. | To A. Mayfield, distiller | 25 00 | |
| | 23. | To T. F. Brooks, distiller | 25 00 | |
| | 23. | To W. S. Harris, distiller | 25 00 | |
| | 23. | To Leo White & Co | 25 00 | |
| | | | | 125 00 |
| Jan. | 27. | To Bartley, Johnson & Co., distillers | 50 00 | |
| | 27. | To Hofheimer & Sellegar | 300 00 | |
| | 27. | To J. B. Watham & Bro., distillers | 100 00 | |
| | 27. | To Harris & Callaghan, distillers | 100 00 | |
| | 27. | To Jesse Moore & Co., distillers | 100 00 | |
| | 27. | To T. H. Shirley & Co., distillers | 300 00 | |
| | 27. | To J. G. Mattingly & Sons | 300 00 | |
| | | | | 1,250 00 |
| March | 15. | To J. M. Atherton Co | 300 00 | |
| | 15. | To Kentucky Distilling Company | 150 00 | |
| | 25. | To Mellwood Distilling Company | 300 00 | |
| | 25. | To Wallwork & Harris | 50 00 | |
| | 29. | To Redman Distilling Company | 37 50 | |
| | 29. | To L. Van Hook | 50 00 | |
| | 29. | To C. B. Cook | 40 00 | |
| | 29. | To Sharp Distilling Company | 35 00 | |
| | 29. | To T. J. McGebben | 75 00 | |
| | 29. | To Ashbrook Brothers | 40 00 | |
| | 29. | To McGebben & Brauble | 100 00 | |
| | 29. | To John C. Lee | 50 00 | |
| April | 3. | To Wiggleworth Brothers | 25 00 | |
| | 3. | To Brown, Thompson & Co | 50 00 | |
| | 3. | To M. V. Monarch, for Owensborough distillers | 500 00 | |
| May | 25. | To The Newcomb Buchanan Company | 300 00 | |
| | | | | 4,749 00 |

DEBITS.

| | |
|---|---|
| Paid G. C. Wharton, attorney | 4,000 00 |
| Paid W. H. Jacobs, secretary | 300 00 |
| Paid John Mason Brown, attorney | 150 00 |

| | | | |
|---|---|---|---|
| | Paid printing and advertising | $136 90 | |
| | Paid collections | 75 | |
| | | | $4,587 65 |
| May 27. | To balance, cash on hand this day | | 161 35 |

LIABILITIES.

| | |
|---|---|
| G. C. Wharton | 1,000 00 |
| John Mason Brown | 300 00 |
| Printing contracted for and now under way | 50 00 |
| Printing postage for circulars | 10 00 |
| Printing sundry small bills, about | 30 00 |
| | 1,390 00 |
| Deduct cash on hand | 161 35 |
| | 1,228 65 |

STATE OF KENTUCKY,
*Jefferson County, ss:*

Personally appeared W. H. Jacobs, to me well known, who states that he is now and has been for more than one year last past the secretary and treasurer of The Kentucky Distillers' Association, and as such is perfectly familiar with its finances. That during said time he has collected from all sources the sum of $4,749, and has paid out and accounted for same as per itemized statement herewith, leaving a balance on hand this day of $161.35.

W. H. JACOBS.

Sworn to and subscribed before me this 27th May, 1882.
[SEAL.] LOUIS G. CRAWFORD,
*Notary Public, Jefferson County, Kentucky.*

Q. Do you make that your own testimony or only submit it as a statement of the treasurer?—A. I am submitting it for what it is worth as a sworn statement of the treasurer. Our company has paid $50, and in another instance, $300, towards Colonel Wharton's salary, which constitutes all the money we have ever paid into the association since it was organized, or have ever agreed to pay.

Q. Where does Mr. Jacobs live?—A. He lives in Louisville.

Q. Does this statement contain the $25 admission fee, as well as the special assessment?—A. Yes, sir; that is the fund upon which the association relies for its ordinary expenses.

Q. This contains the special assessment as well as the initiation?—A. It contains every cent from every source.

Q. When was Colonel Wharton employed?—A. I think that Colonel Wharton was employed about the 1st of January. I am not certain about that time.

Q. I see you paid him $4,000 on the 25th of May. Why did you pay him so much in advance if it was yearly employment?—A. It was not all paid at that time. There was that much paid up to that time. He has been paid in installments, I think, probably of $1,000 at a time. I don't know; he may have fooled the money away here. He wanted it, and we gave it to him. I do not know how much he spends; don't know how much it takes for him to live in Washington.

Q. It struck me as a little strange, it being a yearly salary, that you should have paid him from the 1st of January up to the 25th of May, four-fifths of it?—A. We gave it to him simply because he asked us for it; said he was broke. I expect he can account for what he did with it, if the committee want to know. I don't really know.

Q. Now, have you made no effort, Mr. Atherton, to raise any other money than is mentioned in this statement?—A. Yes, sir.

Q. What?—A. I assisted among others in raising in Louisville some

money to defray the expenses attending the preparation and presentation of this bill.

Q. Tell us how you thought there could be any expenses over and above the expenses of your very able attorneys and legal ability, in preparing the bill and presenting it.

The WITNESS. How there might be expenses?

The CHAIRMAN. Yes; how did you suppose there would be expenses?—A. Well, it costs something to come to Washington City.

Q. Well, the $5,000 ought to pay Colonel Wharton's expenses.—A. He does not get any of that; we don't expect to pay him any more. To be distinctly understood about this other money that was raised, and about which probably you have heard something, we did not attempt to raise any money until this Republican caucus had refused to consider the reduction of the tax at this time. There had not been a dollar raised, nor any effort made to raise any at all. But when that action was taken by this caucus here, we, of course, knew that this bill—this present bill—would be presented, and effort made to pass it; and following that would be an effort made to present the reduction. Many of our dealers are as much interested, or probably more, in the reduction of the tax as they are in the extension of the bonded period; they vary about that; some prefer one measure and some another; some both, and generally both; and, knowing that we would have to present the reduction of the tax as a separate measure, it would be necessary to employ probably an agent or attorney, or Mr. Wharton would remain longer—probably they need not come until next year—and feeling that it was right that Louisville should contribute towards the expense, and not throw the entire burden upon Mr. Shufeldt and the Western men, I proposed to try to raise some money in Louisville, and we raised about $4,500, and that was paid to the order of Mr. Shufeldt.

Q. How did you raise that?—A. By voluntary contributions; no other way.

Q. Was that the money that was partially raised at a meeting that was advertised to be held for that purpose in Louisville?—A. Yes, sir; it was done openly; there was no secret about it.

Q. How much did you raise at the first meeting?—A. There was nothing raised except at one meeting. There was a meeting held at the Galt House. There were frequent conferences about the expenses connected with the legislation, but there was no money raised except by a committee through that meeting.

Q. And that was $4,300?—A. Yes, sir; I so understand. There was only $4,000 raised. I gave $250 to that fund.

Q. What was done with that fund?—A. We paid our money to C. P. Moorman, of Louisville, and I understand he turned it over to Mr. Shufeldt.

Q. Do you know whether there was any money raised anywhere else?—A. I do not.

Q. Have you been informed of any?—A. Only as I came here I heard Mr. Shufeldt say he had some little money from some other source.

Q. Did he say how much?—A. I think he said about $2,200. I do not remember about that. Our company gave $250 to that fund there at the Galt House, and that is every cent we have contributed directly or indirectly, in any shape, form, or fashion.

Q. That $4,000 was in addition to the amount raised here? (Referring to the treasurer's statement.)—A. Of course; that is a different thing altogether. That was confined purely to the legitimate expenses

in Kentucky, and to pay Colonel Warton his fee; it embraced no other purpose.

Q. Did you have any understanding as to what the money was for when you raised it—a specific understanding?—A. Yes, sir; that it was to be used in defraying the expense of the tax reduction by Congress.

Q. As that has been given up, has the money been returned?—A. No, it has not been given up, by any manner of means.

Q. There is no bill pending for it, is there?—A. No, because the Ways and Means Committee of the House has not yet taken such steps as will enable the matter to be brought to the attention of Congress.

Q. Do you know whether any of that money has been used?—A. I do not know anything about that money except what I have heard from Mr. Shufeldt, just in a casual conversation, as I came here. I do not know anything about that. He can answer that himself.

Q. What did he tell you about it?—A. Mr. Shufeldt said he had the money, all the money that was raised for the reduction of the tax, every dollar of it, and had not expended a dollar. Some of the $2,500 he had expended, but he can give you the details probably with more satisfaction than I could. Still, I can tell you what he told me, if you want to know.

Q. Yes.—A. He said he had expended about $1,500; $200 or $300 in matters of printing, and the rest had been expended for purposes to back the whisky interest.

Q. He did not say how?—A. Yes; contributed to defeat prohibition by the whisky men wherever he was called on for that purpose.

Q. And had not been used here?—A. Not a dollar; not a cent.

Q. The papers have said a good deal about an interview of yours in which you said a set of lobbyists had attempted to get money from you. What are the facts about that?—A. When I was in Washington (I do not remember whether it was in January or February)—I was here three or four days as a member of the committee preparing this bill—while here offers of assistance were made by gentlemen asking to be retained in preparing and presenting the bill. Those services were declined because we had not the money to pay them, had made no arrangements to employ anybody, did not expect to spend a dollar except for the payment of Colonel Wharton and other expenses of that kind, and of course their services were declined. I stated in that interview, further, that since leaving here I had heard—I do not remember exactly how—that threats had been made to defeat the bill. That is all I stated in that interview.

Q. Did you hear who made the threats?—A. I did not. I did not hear any names called. I do not now remember, definitely, who told me, whether it was Colonel Wharton or some one else.

Q. Do you remember the parties who called on you to ask for assistance?—A. Yes, sir; I do.

Q. Who were they?—A. Well, I do not want to give their names, for the reason that they did not propose to do anything wrong. They did not mention the name of a Senator or Member of Congress, and did not offer to use a dollar. It was purely a business matter, and purely a private matter.

Q. They asked to be employed, though?—A. Yes, of course, and if employed they would have expected to be paid. But as I have no knowledge that these men did anything, or took any part in it in any way whatever, it would be manifestly unjust to give their names and leave them open to suspicion of having done anything in connection with the matter that, so far as I know, they had not.

Q. You do not know as it would.—A. There is nothing whatever mysterious in a Washington City man offering his services in such a manner.

By Mr. COCKRELL:

Q. If that is so he would not be ashamed of it, and would not take offense at your telling it.—A. That I would not like to do, because there has been so much said about the lobby in connection with this that I would not subject any gentleman to the censure of having been connected with anything improper, not knowing that he had done it. If I had known that he had done anything improper, I would give his name in a minute, but in the absence of that knowledge I am not willing to do it.

By Mr. HAWLEY:

Q. Were these men who offered their services in this matter all attorneys—lawyers by profession?—A. That I cannot answer, whether they are or not. I do not know whether they call themselves attorneys. One of the gentlemen I only know from a casual acquaintance, meeting him here. My conversation with him was very brief. He simply said to me then, as one gentleman would to another, that in presenting this bill he would like to be retained. I just simply gave an evasive answer, and dropped the subject.

Q. Let me tell the chairman—and the witnesses present if they care to hear—what was in my mind when I asked that question, and why I would like some further inquiry in this direction. It was reported that applications had been made to the distillers for employment in presenting these matters to Congress, and by newspaper men among others. It was intimated that the distillers were told that if they did not make disbursements in some form—to press correspondents among others—the measures sought would be defeated. Now, some of the gentlemen of the press—and they are, as a body, as honorable as people of any other profession—said to me that if an investigation should be made they hoped that any such conduct, if such there were, would be fully exposed. This they desired for the honor of their calling, and Mr. Atherton will oblige them by exposing any attempts or suggestions of the kind.—A. I was reported by the reporter of the Louisville Commercial as saying that the newspaper correspondents had approached me; and I wish to say that no newspaper correspondent ever approached me here or elsewhere, and I made a statement then to that effect.

The CHAIRMAN. I will read the report to which I suppose you are referring.

I read from the Louisville Commercial of April 28, 1882, a portion of what purports to be an interview with Mr. Atherton:

"Are there no other sources of opposition?"

"There is a very strong one that I have not mentioned," said Mr. Atherton. "The 'Carlisle bill' it was intended to put through Congress upon its merits. A delegation of distillers and dealers went to Washington early in the session to consider what legislation was needed for the protection of their interests, and, after several conferences, agreed upon the present bill. A number of lobbyists approached that delegation, of which I happened to be a member, and suggested that their services might be of material benefit to us, but all their offers of assistance were refused. Some of the lobbyists at once began to boast publicly that they could and would kill the bill. It is to this source that I think can be traced the sensation of the New York Herald. It was also hinted that unless certain influential newspaper correspondents at the capital were well feed—say at $1,000 apiece—they would greatly damage our cause. Mr. Shufeldt, president of the National Distillers' Association, who is now in Washington, has frequently written to me that there was danger from a coalition of these unemployed lobbyists and unfeed correspondents, and I have been watching all along for just such publications as the one that has just appeared charging that a gigantic swindle is at the bottom of all this legislation asked for."

A. All that part of the interview which refers to correspondents was a mistake, and no such statements were made by me to the reporter or any one else, and all that part of it with reference to correspondence with Mr. Shufeldt is a mistake, because I never had but one letter from Mr. Shufeldt up to that time in my life, and that was in reference to the failure of Newcome, Buchanan & Co.

Q. Was there any interview upon that subject at all?—A. Yes, sir.

Q. Who was the man who interviewed you?—A. Hawthorne Hill.

Q. Does he reside here?—A. No, sir; in Louisville. He had repeatedly called on me for information concerning this bill, and I had repeatedly given him information with the distinct understanding that I was not to be reported, because I am rather adverse to appearing in the newspapers. We were talking together quietly upon the prospects of the passage of the bill, and I was giving him my opinion as to the opposition the bill would encounter, and the only fact I stated or attempted to state was, that certain gentlemen had asked to be retained. I stated that fact to show our condition financially, that we had no money, and that all the charges made against us by the Herald were malicious and false, and we could not employ these men, because we had not the money. That was the object in mentioning the matter to him, and for no other purpose.

Q. Well, you did have some money, $5,000 for Mr. Wharton, and $4,000 that you collected?—A. The $4,000 had not been raised at that time, I think; that was to be applied, by the terms of the subscription, to the reduction of the tax, and as an evidence of that fact I will give you a copy of the resolution, and a copy of the name of every man who subscribed to it. (Producing it.)

Q. What resolution is that?—A. This is the meeting at the Galt House, the resolution under which the money was subscribed, together with the name of the subscriber, showing the amount he gave, and everything connected with it. If the committee want that, I will be very glad to give it.

Q. Did you only want to give out this idea that there is no money, because you have mentioned $5,000 paid to Colonel Wharton, and $4,000 that you raised, which makes $9,000, and $2,500 that Mr. Shufeldt raised, which would make $11,500; and Mr. Thomas has told us of $500 sent to him, and we have heard of $200 being drawn for, so we are getting up into quite a number of thousands already?—A. I do not care what has been sent to Mr. Thomas; $5,000 was paid to Colonel Wharton, and he used that money to defray his own personal expenses.

Q. In this interview you said that "some of the lobbyists at once began to boast publicly that they could and would kill the bill." Is there any truth in that statement?—A. No, sir; except what I heard. I have not been in Washington since February. I understood that threats had been made in Washington to defeat the bill, but no names were given me.

Q. Who told you that?—A. I do not remember that; it was in conversation. I could not say definitely whether it was Colonel Wharton or some other man.

Q. Here is another statement which seems to be very explicit. The interview makes you say: "It was also hinted that unless certain influential newspaper correspondents at the capital were well feed—say at $1,000 apiece—they would greatly damage our cause." Is there any truth whatever in that?—A. Not one word of truth. I published a card with reference to what I said, and all I said on this subject was, that if we were to be attacked as we were in the Herald by such slanderous

and malicious charges, as a business matter it would have been a good investment to have quieted men who would attack a bill in that way; that it would have been a good investment, if we had to do it with money.

Q. Had you any reasons to suppose you could quiet them in that way?—A. None in the world. I simply said if it could be done it would be a good investment.

Q. Has Mr. Shufeldt said anything to you about "danger from a coalition of these unemployed lobbyists"?—A. Not a word. That was purely a statement of the reporter. That interview was never submitted to me in writing. I never saw the manuscript. I did not know that he intended to publish a report of it as an interview. He saw me at my house at 9 o'clock at night, and had to write at his own office from memory, and would naturally have forgotten a great deal that was said.

Q. He seems to have remembered too much.—A. I have a letter from him on that very subject. I called his attention to the fact that there had been a good deal of offense given to the correspondents, and I wanted him to state just exactly what occurred. He gave me this letter which I would like to show to the committee. It is from Mr. Hill himself. He states the facts under which that interview was given.

The CHAIRMAN. Shall I read it?

The WITNESS. If you like.

The chairman read the letter, as follows:

THE COMMERCIAL,
*Louisville, Ky., May* 10, 1882.

Mr. JOHN M. ATHERTON:

DEAR SIR: The interview with you on the pending whisky bill, published in the Commercial of April 28, was written by me, and based upon an informal conversation on the subject, had with you at your residence on the evening before. I did not indicate in this conversation any intention of printing an interview with you, and really had no idea other than of using the facts obtained from you, in an article on the extension of the bonded period for distilled spirits. At a late hour on the evening of the interview, after beginning to write the article, I decided to change the form of the article, and the published interview was the result. The article was hastily written and sent to the printer, page by page, and I did not even see a proof of it before the paper was printed. This may explain satisfactorily some errors made in reporting you in regard to certain alleged acts of newspaper correspondents in Washington. The idea of publishing the article was my own, and I called upon you expressly to get facts for it.

Very truly,

HAWTHORNE HILL.

The WITNESS. Everything that I said with reference to the bill in Washington grew out of the article in the New York Herald of April 24, which I believed to be false so far as I knew what had been done in Kentucky. I did not believe there was any ring in Kentucky. I did not believe that anybody in Kentucky had conspired to defraud the revenue. Certainly I had no knowledge of any such conspiracy. I thought that article was calculated to injure the bill. We all try to do business in an honorable way, and I thought the Herald had no right to publish such an article unless it believed it had good authority for it. People do not generally make such statements from virtuous or patriotic motives, and I could not understand why such an article had got into the Herald unless it had been imposed on in that way.

Q. How many persons were here, and who were they, at the time you were in Washington?—A. Mr. Shufeldt, as president of the National Distillers' Association; Colonel Wharton was here employed by the Kentucky distillers; and Major Davis, a member of the firm of Davis & Hayden, of Louisville, Ky; Colonel Clark, of Peoria; Mr. Kellogg, of Cincin-

nati; I believe Mr. Gaff, of Cincinnati; Mr. Crichton, of Baltimore; Mr. Sinnott, of Philadelphia; and Colonel Beecher, of New York. I believe that was the committee. If there were any others I do not remember.

Q. Who paid Mr. Moulton's expenses on here, or was he the attorney?—A. I do not know anything about who employed Mr. Moulton, nor what he was to be paid. I understood he was just simply—I only know from hearsay—that he was employed by the dealers and distillers in Cincinnati. I do not know where the money came from, and do not know what was done with it.

Q. As to this interview. General Hawley has said, Mr. Atherton, that we should like very much, for the purpose of this investigation, as well as in justice to newspaper men of high standing here, to have the names of those gentlemen.—A. Well, I should just reply to that, Mr. Chairman, that I have never been approached by any newspaper man directly or indirectly, and never made any statement of that kind. I do not know that any newspaper man ever expected to be employed. He certainly did not ask me to employ him; and I decline to give the names of the gentlemen who spoke to me, because there was nothing improper occurred in the conversation, and I do not desire to subject those gentlemen to any censure that their names in this connection might subject them to.

By Mr. COCKRELL:

Q. Now, if their offer was perfectly honorable and legitimate, why will there be any impropriety in disclosing their names?—A. For the simple reason that that statement is connected with the fact that there had been threats made, and now to give the names of those gentlemen might subject them to the suspicion that they made those threats, when I have not the slightest idea that those gentlemen made the threats; just simply that threats had been made in an indefinite way, without mentioning the name of any Senator or any officer of this government. These gentlemen offered to aid simply in presenting this bill, but I do not want to mix them up with it, because they may have other interests here, and it is not my duty or right to injure them in this way where I have no evidence against them at all.

Q. Did they request you not to mention it?—A. Not at all. I never had any conversation since.

Q. If you should come to Washington and parties should propose to sell you land here, you wanting to locate here, and some controversy should grow out of that, do you consider it would be doing injustice to those gentlemen to tell their names?—A. I would if those transactions had been followed up by anything that could possibly subject them to criticism.

Q. Don't you feel in this case that the criticism that has resulted has resulted very largely from what you yourself have said and what has been published purporting to come from you, and that it would be justice to them to state their names?—A. These gentlemen are in Washington City, and if they want their names given they can come here or communicate to the committee and give them; and, I presume, if they want their names mentioned they will do so. If nothing unpleasant had grown out of this I would cheerfully have given the names wanted. But I cannot do a gentleman any injustice by dragging him in this controversy where I have had no evidence, and have no reason to believe, he deserves criticism.

Q. Has not it all grown out of what you said, or are reported to have said, and are not you responsible for it?—A. I am not responsible for that.

Q. In your own interview did you use the word "lobbyist"?—A. Yes, sir; I used the word "lobbyist" or "agent"; I do not know which I used; probably I used it.

Q. Then you yourself are casting aspersions upon these gentlemen. There are a hundred attorneys, reputable gentlemen, in Washington, engaged in these matters, who come before the committees of the Senate and House and visit the senators and members to whom cases are re-referred, who are employed to make arguments and everything of that kind, but they send in their names just as they do in court, and if this was a legitimate business, and you believe it to be so, I cannot see why you refuse to give their names.

The WITNESS. I presume if these gentlemen had been employed they would have come before the committee just as Colonel Wharton has. I have no reason to believe to the contrary, but as what I stated has been so distorted and so misrepresented, I do not propose to do them any injustice by bringing them into it.

Mr. COCKRELL. Therefore the greater responsibility is on you to rectify the errors growing out of your action.

The WITNESS. I did not make any errors.

Mr. COCKRELL. You say the injustice has come to these men. You admit a reflection would probably be cast upon them, but if it be cast upon them by giving their names you are the cause of it.

The WITNESS. That is just a difference of opinion about it. I do not intend to drag in a gentleman and subject him to censure.

Q. How will he be subject to censure if his proposition was an honorable and legitimate one?—A. Just simply because it has been stated and believed that there had been some opposition to this bill set up that the bill did not deserve, and statements made that were not true, such as have been made in many of the newspapers. I do not know who inspired these statements, and I do not want to give these gentlemen's names in order to make the public believe that these men inspired those attacks. If I knew who wrote that article in the Herald I would give it in a minute, if I knew that these men were connected with it. I would give it in a minute if I knew the gentleman connected with the Critic, if these gentlemen were connected with it.

By the CHAIRMAN:

Q. Have you not some reason to suppose they never did open their mouths about it?—A. No, I do not know that they ever have.

Mr. COCKRELL. I say very frankly that I do not think the witness has a right to withhold names of that character, and I shall insist upon going to the extent of the law in requiring an answer to the question. I think it is just to the committee, and just to the witness himself.

The WITNESS. I want my answer to state perfectly plain that no gentleman that applied to me mentioned the name of any member of Congress, or any official of the United States Government. It was purely a business proposition, that was declined. I never heard that these gentlemen did anything, or attempted to do anything, that was unjust, illegal, or improper in any shape, form, or fashion; and under the circumstances I will not do them the injustice now to give their names, for I believe that they did not do anything improper. If I had ever even heard they had I would cheerfully give their names, because it would be my interest to do it, but under the circumstances I decline to do it.

Mr. COCKRELL. The only injustice that comes to them is that you yourself cast an aspersion upon them, and now refuse to give their names.

The WITNESS. I presume you have had other witnesses who have replied in the same way.

Mr. COCKRELL. You are the first witness who has refused to answer a question.

The CHAIRMAN. We will consider that a flat refusal to answer the question, and go on with the examination, and take such action as we choose.

Mr. HAWLEY. You see this comes precisely to the point that hundreds of other investigations and scandals have come to. It has been alleged that people sought employment in the lobby, and then turned around to fight a measure because they could not get the employment; fight it through the members and otherwise. Now, I should like for once in my life around Washington to follow that thing to the end. It has been done in regard to some measures, enterprises here, and I should like for once to have it hunted down.

The WITNESS. I am willing to say this: that if these gentlemen will say giving their names will not injure them personally, I will cheerfully give them. I have no desire, except that I do not want to censure them, knowing that they do not deserve it. If they do that, I will give their names; if they do not object to it, I will give their names.

The CHAIRMAN. We can hardly act upon such an arrangement as that.

The WITNESS. I am just stating what induces me to withhold their names.

By Mr. COCKRELL:

Q. This paper (examining paper), as I understand it, is the resolution passed at the time this $4,000 was raised?—A. That was the resolution that contemplated the raising of the $4,000, and the committee appointed by that resolution did raise the $4,000.

Q. These are the names of the parties that subscribed?—A. Yes, sir.

Q. Now, what disposition was made of that?—A. That $4,000, as I understand, was turned over to Mr. Schufeldt. I do not know definitely what was done with it, because I did not collect the money. I paid $250, and I hear that that money was turned over to Mr. Schufeldt.

Q. $4,300 seem to have been collected here?—A. Well, Schufeldt says he only got $4,000. I did not attend to the details of it at all. I suppose somebody signed and went back on his subscription for $300.

By the CHAIRMAN:

Q. Was this resolution written out at the time of the meeting?—A. Yes, and that is a copy of the original now in the possession of Mr. Moorman.

Q. Was a copy given to Mr. Schufeldt?—A. Not that I know of.

Q. Did he know the object?—A. Yes, sir.

Q. Was he advised exactly of the proceedings to raise the money?—A. Not by me, he was not; but I presume he was by the persons who remitted the money.

Q. Has there been, to your knowledge, any bill prepared for the reduction of tax since this money was raised?—A. Not that I know of. There is a determination by those interested to present the tax reduction if they can get an opportunity, either before the Committee of Ways and Means or the House, if any bill comes up where the tax question is presented, but it may not be until next winter.

Q. Do you know whether anybody has been employed and sent here for the purpose of securing a reduction of the tax?—A. I do not. I have had very little to do with that bill since I came here, except just to watch its course in Congress. I feel some interest to see the legislation settled

in one way or another. I desire to say to the committee, that personally I have very little interest in the pending bill, and care very little whether it is passed or defeated, and have not for the past four or five months. If it is to be passed in its present shape, I would rather see it killed than passed.

Q. But the House bill; have you not a good deal of interest in that?—A. Not especially.

Q. What amount of whisky do you own in bond?—A. Our house owns about 3,000 barrels out of 90,000 barrels in our warehouses. That belongs to people who live throughout the United States from Providence, R. I., to San Antonio, Tex., and as far west as Denver.

Q. Three thousand barrels are how many gallons?—A. About 120,000.

Q. When does the tax become due on that?—A. 300 barrels of it falls due next spring, a year from now, and the remainder does not mature for two years.

Q. Are you not on bond to a large amount for whisky in bond?—A. As manufacturer, yes.

Q. For how much are you on bond?—A. As manufacturer and custodian of the whisky we execute bonds for the full amount of tax upon all the whisky in our warehouses.

Q. So you have given bonds for 90,000 barrels?—A. Yes; 90,000 barrels; about 90,000; I do not speak exactly.

Q. That is about how many gallons?—A. Well, it is about $4,000,000 taxes.

Q. Then you are on bonds now for something over three and a half million dollars for this class?—A. Yes, sir.

Q. What time does it mature?—A. It matures three years from the time it was deposited. There is a little of 1879 still remaining in bond, and then some seven or eight thousand barrels on which the tax matures a year from now. The tax matures three years from the time it is deposited in the warehouses.

Q. Then, if this House bill should pass it would give you an indefinite time to have the tax paid, would it not?—A. I am not responsible for the payment of any of it, except on the whiskies we own—the three thousand barrels—and that we will try to take care of.

Q. Are you not on bonds of others for that amount?—A. Yes, sir; I am on the bonds of others, and have been so for the last 12 or 15 years, and in no solitary instance has there ever been one moment's delay because of failure of the owner to pay. We do not surrender it until the tax is paid.

The CHAIRMAN. I want to read the portion of this paper you handed me, and have it included in the evidence:

At a meeting of the wholesale liquor dealers and distillers, held at the Galt House April 6, 1882, for the purpose of organizing an association to make an effort to have the tax reduced on whisky to 50c. per gallon, it was

*Resolved*, That a committee of six be appointed, consisting of Charles P. Moorman, *chairman;* H. A. Thierman, F. W. Bonnie, B. D. Mattingly, Aug. Coldenay, Wm. T. Ross, to solicit subscriptions from the whiskey interests of this city, payable to the order of H. H. Shufeldt, and that Louisville should contribute $5,000.00.

J. M. ATHERTON, *Chairman.*
WM. T. ROSS, *Secretary.*

We, the undersigned, agree to contribute the amount opposite our names for the purpose named:

| | |
|---|---|
| The J. M. Atherton Co. (paid) | $250 00 |
| C. P. Moorman & Co. (paid) | 500 00 |
| Bonnie Bros. (paid) | 250 00 |
| E. H. Chase & Co. (paid) | 250 00 |
| Cochran Fulton Co. (paid) | 250 00 |
| Jesse Moore & Co. (paid) | 250 00 |

| | |
|---|---|
| Alvin Wood & Co. (paid) | $100 00 |
| Hofheimer & Selliger (paid) | 250 00 |
| Frankel & Block (paid) | 100 00 |
| Lee, Bloom & Co. (paid) | 50 00 |
| Stoge & Reiling (paid) | 100 00 |
| Brown, Thompson & Co. (paid) | 50 00 |
| M. Schurtz (paid) | 50 00 |
| Jno. B. McIlrain & Son (paid) | 50 00 |
| Taylor & Williams (paid) | 50 00 |
| Mellwood Distilling Co., by G. W. Sweargin, president (paid) | 250 00 |
| J. G. Mattingly & Sons (paid) | 250 00 |
| J. W. Lyon & Co. (paid) | 50 00 |
| Kentucky Distilling Co., by Julius Barkhouse, pres't (paid) | 100 00 |
| Gilmore, Ross & Co. (paid) | 25 00 |
| Harris & Callaghan (paid) | 50 00 |
| John Callaghan & Co. (paid) | 50 00 |
| Davis & Haden (paid) | 100 00 |
| Walker & Co. (paid) | 25 00 |
| Bartley Johnson & Co. (paid) | 100 00 |
| Applegate & Sons (paid) | 100 00 |
| Aug. Coldenay (paid) | 50 00 |
| Robt. G. McCorkle (paid) | 50 00 |
| W. L. Weller (paid) | 25 00 |
| H. A. Thierman & Co. (paid) | 250 00 |
| Wm. Robbin & Co. (paid) | 25 00 |
| Henry Wolff (paid) | 50 00 |
| Dan. E. Doherty & Co. (paid) | 50 00 |
| Lapp, Goldsmith & Co. (paid) | 50 00 |
| J. Seekamp & Bro. (paid) | 50 00 |
| J. Simon & Co. (paid) | 50 00 |
| | $4,300 00 |

We certify the foregoing to be a true copy from the original in our possession.

C. P. MOORMAN & CO.

LOUISVILLE, KY., *May* 29, 1882.

The WITNESS. There was nothing secret about that; never intended to be.

Q. Was that published in the newspapers at the time?—A. No, sir; it was not published.

Q. Was there any reporter present?—A. No, sir; because it was purely a business matter, and was openly canvassed on the street and the money was solicited. We could not succeed in raising $5,000, which we felt was the just contribution of Kentucky to the expenses.

Q. But your resolution stated that it was the share which "Louisville should contribute"?—A. Yes, sir; that is all we had interest in; we did not go outside of Louisville.

Q. Why did you arrange to have these subscriptions sent to Mr. Shufeldt?—A. Because Mr. Shufeldt was known to be interested in the reduction of the tax.

Q. But was not Mr. Shufeldt known to be equally interested in the pending bill?—A. Yes; but Mr. Shufeldt, owing to his location, and the class of goods he manufactured, was not materially benefited by extension of the bond, but would be materially benefited by reduction of the tax.

Q Had Mr. Shufeldt written you anything on the subject?—A. Not a word, that I remember.

Q. Had you any communication with him, or anybody else, suggesting that money be sent to Mr. Shufeldt at that time for that purpose?—A. Well, I had told Mr. Shufeldt when he was in Louisville, probably a month previous to that time, that we would pay our part of any expenses incurred in attorneys, and in preparing the bill, and in presenting it to Congress, or any other expense connected with it.

Q. The bill of which you and he spoke—was that only the bill for reduction of tax, or did it include the pending bill?—A. When we first had the conversation, it referred to the pending bill, and probably it would give the committee a more accurate idea of why that money was raised just simply to explain one fact in connection with the pending legislation: The manufacturers of fine whiskies that are held for age, in Kentucky, Tennessee, Maryland, and Pennsylvania, were more directly interested in the extension of the bond than in the reduction of the tax; that is, many of them want the tax reduced; many of them would be glad to see it reduced for many reasons, some of them were very grave reasons; but the Western men, the men who make staple goods—high wine, cologne spirits, and alcohol—are not interested in the bond period at all, because they deposit no whiskies in the warehouses. There has been some feeling among the trade that some jealousy might arise between the different branches of the business; purely a trade question. When this Republican caucus here determined not to take up reduction at this time, we were afraid in Kentucky—I was for one—that the Western men would feel that Kentucky was to be again benefited; that fine whiskies, in general terms, would be benefited by the extension, and that the Western interests were to get no legislation favorable to their interests; and, consequently, we were very willing in Kentucky to arrange with these Western men that if they would go on and use what influence they had in securing the passage of this bill, that we would show our good faith in subscribing at that time to the expenses that would be incurred in the effort to reduce the taxes.

The CHAIRMAN. I understand you now.

The WITNESS. That is just the reason why we took that position in Kentucky.

Q. This subscription, then, was raised in order to keep the Western men who were interested in the staple goods good-natured, by helping them to what they wanted?—A. Very largely. To be literally correct, I think I first suggested, probably a month before that, to our people there, that as an evidence of our good faith it would be nothing more than right we should agree with the Western people that, as double expense would be incurred, the expense of presenting this bill, and that to be followed with the additional expense of presenting the reduction bill, either this year or next year, it would be an evidence of our good faith if we would then agree to defray part of the expenses when the time came. That was really the origin of that subscription.

Q. This, then, is a sort of combination between the two interests?—A. That is it, exactly. It expresses the point exactly.

Q. Had Mr. Shufeldt visited Louisville for the purpose of raising funds for the purpose?—A. No; Mr. Shufeldt was in Louisville a month or six weeks before there was any effort to raise money at all, and then there had been no action in Washington with reference to reduction.

Q. Had Mr. Shufeldt said anything about raising funds when there?—A. Not to me.

Q. Had he to anybody?—A. I do know not that he did. I made that suggestion; Mr. Shufeldt was present at the meeting.

Q. Present at this meeting?—A. Not at this meeting, but he was at a little conference of the Kentucky distillers a month or two previous to that. There had been some little discussion among our people as to the original bill presented. Some of our largest manufacturers have never been in favor of the indefinite extension of the bonded period. I came here to urge that, but I myself became satisfied, going home, that indefinite extension was not best for us. I believe that our inter-

ests would be best subserved by having a limit, and really we wanted the delegation to agree to ask the Committee on Ways and Means to limit the bonded period. And Mr. Shufeldt was there at that time, and we were discussing those matters about what we would finally do with the bill, and then I suggested to Mr. Shufeldt that, in case the bill was defeated or became defeated in any way, we wanted the Western men to come on and help us pass the bond bill, and we would guarantee to defray the expenses of the reduction when the time came. That is the historical fact connected with the subscription.

Q. Are these men who made this subscription, whose names are signed to that paper, manufacturers of what is called Kentucky whisky?—A. They are both manufacturers and dealers; they are probably four-fifths dealers.

Q. Are they interested in what is called staple goods?—A. No; they are all dealers in Kentucky goods, all of them.

Q. Now is there any expectation that the dealers in the staple goods and manufacturers would reciprocate?

The WITNESS. In what way?

The CHAIRMAN. By helping you to pass the bond bill.

The WITNESS. Of course, that was the purpose; that was agreed in the National Distillers' Association, that both bills would be presented, that both features would be presented, both indefinite extension and the reduction of the tax, and we all agreed, as a kind of mutual concession to each other, that we would aid in the passage of both bills.

Q. Was there any understanding that they would furnish money to assist in the general purposes of legislation?—A. No, sir; there was not a word said with reference to the pending bill.

Q. Have you any acknowledgment of this money when it was sent to Mr. Shufeldt?—A. I know nothing in the world about it, except that I was present at that meeting, appointed that committee, and then paid $250.

Q. Who sent the money?—A. My impression is that Mr. Moorman, of Louisville, sent the money.

Q. And you do not know whether he received any reply?—A. No, sir; I do not know anything about it.

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FRIDAY, *June* 2, 1882.

JOHN M. ATHERTON, recalled.

By the CHAIRMAN:

Q. Mr. Atherton, I understood from your testimony yesterday that you did not feel much interest in this House bill we were investigating?—A. Personally, I do not. The only interest I have taken in the bill from the origin has been to relieve the men who have bought my whisky and who now own it; they are the owners of the property.

Q. What proportion of the whisky you manufacture has been sold in bond?—A. We manufactured in this past season just closing, I think, about 45,000 barrels. Of that we own between 1,000 and 1,500; the remainder is all sold.

Q. Do you know from your general knowledge of the trade whether that is about the proportion that has been sold generally?—A. My belief is that probably that is a larger percentage than is held by the distillers; I do not know a distiller in the State of Kentucky who has held any more whisky than we have.

Q. How long has that mode of doing business been going on; how long since it was first adopted?

The WITNESS. What mode of business?

The CHAIRMAN. Selling in bond about as rapidly as you make it.

A. It commenced in 1879, soon after the passage of the first bond extension bill. Previous to that time it was not only difficult but almost impossible to make sale of goods in bond, because the purchaser of the goods would be required to pay the tax before the goods were for use, and, consequently, they all preferred to wait until the distiller had paid the taxes himself and buy the goods tax paid. In that way he got credit on the tax as well as upon the cost of the whisky.

Q. The act of 1878, under which this mode of doing business began, allowed three years for bond, I think, and required 5 per cent. interest after the first year.—A. That is correct, and the reason why the activity existed in 1879 was due to a variety of causes. The country had been depressed for years. The quantity of whisky manufactured in Kentucky under the unfavorable revenue laws that had existed prior to 1878 was reduced to a minimum point, and when the bond extension bill was passed in 1878 it gave confidence to the dealers in Kentucky whiskies throughout the United States to buy the goods, having the three years' extension in which to pay the tax, and having time to mature the goods for age. The quantity being very limited, and the country being more prosperous, it induced a great activity in the whisky trade, just as it did in the iron trade and every industry in the United States.

Q. Were you here in 1880, when the first bill was passed—the Carlisle bill?—A. No, sir; I was never in Washington, I think, pending any legislation until this present winter, and was here then only at the request of Mr. Shufeldt. A committee was appointed from our State, and I happened to be one of the number.

Q. Do not the gentlemen representing the same interests you do feel more interest in this pending bill than they do in the reduction of the tax?—A. Well, one time I believed that was the fact—that our people would rather have preferred the extension. I think, however, that there has been a very considerable change on that point—that many of them would now prefer the reduction of the tax to 50 cents to the passage of this bill, and especially the bill as it is now reported in the Senate. I think that the majority of our large distillers and dealers would be opposed to the Senate bill. I do not speak advisedly, but that is my impression.

Q. On what ground would they be opposed to the passage of the Senate bill?—A. Upon the ground that it affords no relief whatever; that the whiskies can be held out of bond under the bill about as cheaply as in bond.

Q. On account of the 5 per cent. interest?—A. Yes. The whiskies are charged storage as long as they remain in the warehouses. It is expensive taking care of them. The warehouses are expensive buildings, and we guarantee the wastage allowed in the Carlisle bill. The dealer can pay tax, avoid storage, and give it, probably, more accurate attention than we are able to give it.

Q. What is the cost of storage?—A. Five cents per month per barrel is about the usual rule. Merchants have their buildings; every merchant has a building in which he does business, and that building is a store-room. Now, take Louisville: I know merchants who have been occupying the same house for years, with storage capacity of 5,000 bar-

rels, and yet not have 50 barrels of whisky in it. They are drumming around for molasses and other things to fill up with.

Q. What is the cost of insurance?—A. First-class fire-proof houses about 85 cents on the hundred dollars a year; frame buildings, and buildings that are not first-class fire-proof, are higher rate insurance, and their proximity to other buildings affects the rate.

Q. What other expenses are there for keeping whisky in bond except those two named, insurance and storage?—A. No other, except the interest on the investment in the warehouses and the attention which is required of the distiller to keep the packages in good order and to remove the whisky from bond when the owners of it desire the payment of the tax.

Q. Who gives this bond under existing law, the distiller or the purchaser?—A. The distiller; and while we are on that point, I would say that is another reason why our people have felt rather disposed to object to the Senate bill. The bond feature has always been a very burdensome feature with reference to the manufacture of whisky, and in many instances it works very great hardships.

Q. Under the proposed special bonded warehouse the distiller would still give the bond, would he?—A. The distiller would still give the bond. You can see very clearly why they object to the Senate bill. Two men of equal energy and character build distilleries; one would happen at the time he built his distillery to have a father, or brother, or friends who are able to go upon his bond; the other not happening to have persons related to him, or under obligations to him in some way, would be debarred from entering business because he could not execute the bond.

Q. If gentlemen engaged as you are in the manufacture and trade of this Bourbon—I will use the term Kentucky whisky to designate my meaning—do not feel any interest in this bill, who does; what class of people would feel an interest in it?—A. The dealers. I had reference to myself as a manufacturer, being a dealer to a very limited extent.

Q. You regard it, then, as a dealer's bill, rather than a manufacturer's bill?—A. It is a benefit to those who have the goods. They pay for those goods, and must, of course, provide the money to pay the taxes, and if they do not provide the money to pay the taxes the distiller would be expected to pay them, but he would hold the whisky until the owner of it reimbursed him for his outlay; so that the financial burden, as the matter now stands, falls upon the owner, and the owners are distributed all over the United States.

Q. The distiller, under the present arrangement, would hold the whisky as security for the tax, as he is responsible for the tax on his bond?—A. Certainly. Then, referring just a moment to the bond matter, parties are very reluctant to sign bonds that run three years, and especially if you extend the bond to five years; while the statute may permit five years with an onerous bond like that, the manufacturer would be virtually debarred from enjoying the privileges of the extension. His more fortunate neighbor would enjoy the benefits of the extension, while he could not.

Q. A good deal has been said in this investigation about expenses in Washington; the amount of money that was subscribed in various ways for expenses. What do you understand to be the necessary expenses here?—A. I know very little about it. I have been in Washington only four or five days, until I came this time; in the last year or two I was here I think not exceeding four days in February last; I have been in Washington one day since on business with the Commissioner of Inter-

nal Revenue; only passing through here. I do not really know what the expenses are here; I suppose hotel bill, printing, various expenses.

Q. But do not all these gentlemen who come here except Mr. Wharton, who is the attorney, bear their own expenses, so far as you know?—A. I paid my own expenses when I was here; but, really, I ought not to have been required to do so.

Q. What is the rule as to the others, do you know?—A. I do not; I presume they also pay their expenses; but that I do not know; nor whether there is any understanding to reimburse them or not; they ought to be reimbursed for their expenses.

Q. You know of no understanding about it?—A. I know of no understanding to reimburse them. No, sir.

Q. Then your idea of the expenses of promoting the passage of a bill in Washington is indefinite?—A. No, I presume the expenses here are more of a social kind than any other; we meet friends, go to Welcker's, go to New York, and spend a great deal more money than we do at home. I know that is my case, unfortunately.

Q. Do Mr. Wharton's expenses include anything but attorneys' fees?—A. Simply attorneys' fees.

Q. Are his expenses outside that to be paid?—A. He pays his own expenses.

Q. There is no allowance for expenses outside of $5,000?—A. No, sir.

Q. Have you thought anything more of the question we asked you yesterday about these gentlemen who wanted employment—as to whether you can give us an answer?—A. I have not seen any reason to change my judgment or feelings in the matter. I desire to be respectful to the committee, and recognize that they are trying to discharge their duty; at the same time, it must not be ignored that, as a gentleman, I feel certain obligations resting on me that I do not desire to violate, and if the committee fully understood all that I had ever said, misrepresented as it was in the Commercial of April 28, they would clearly understand why I feel as I do. I did not even mention the fact that I knew anybody in order to prove anything except the one point that we had used no money in Washington, and had not expected to use any, and that if we had attempted to use money and expected to use it, we could have availed ourselves of the services of men in Washington who probably could have assisted us in the passage of the bill. That was in answer to the charges made against us in some newspapers, that there was a ring expecting to defraud the government. I mentioned that fact to show we were innocent of the charge—that we had used no money.

Q. Well, you stated yesterday in your testimony that some gentleman, I believe, had approached you desiring to be employed?—A. Certainly. I said a gentleman had offered his services if we employed anybody to aid us in preparing and presenting a bill, and that those services were not accepted because we had no money.

Q. Was there more than one who made that offer?—A. No; I think not. I knew of parties we could have employed if we had adopted that plan of operations, but we did not investigate the matter, and were not prepared, and did not expect to employ anybody. The gentleman, I have since learned (to whom I referred and whose name I would give if I gave any), is an attorney, but of course I feel, as Senator Cockrell said, I may have been the cause of the whole trouble, and that would be the reason why I would be the more sensitive. If I have already given any offense to those men, it is a reason why I should give no greater offense to them. I do not want to be the means of dragging an

innocent man before the committee in order to give him an opportunity to prove his innocence. That is my feeling about it.

Q. Then you decline positively to give the names?—A. Yes, sir; that is my feeling about it. I desire to be distinctly understood that there was nothing passed between the gentleman and myself but the bare statement that we desired no assistance in presenting the bill. We did not want their services, and the matter was dropped then and there. That gentleman, I learned, is an attorney. Not another word outside of what I repeated passed.

By Mr. COCKRELL:

Q. There was only one gentleman, then, who approached you?—A. There was only one who made an offer of services.

Q. Did any others approach you in any way?—A. No; there were only the two; one who made a direct offer, and there is one other whom I have known for years in a casual way. The question was asked by him whether we intended to employ any one on the bill, and I replied we did not, and evaded it, and passed on. We did not want to open the subject. We did not want to offend anybody; wanted to present the bill on its merits, and did not want to do anything to prejudice us or offend any one.

Q. Did any of these gentlemen intimate that they had influence which would be worth money?—A. Not at all. I have stated every word that was said to me by the gentleman whom I have in my mind; the bare, simple statement that, if we wanted any additional aid in preparing and presenting the bill, he would serve us. The conversation was never renewed; nobody's name was mentioned; no method of influence was mentioned.

Q. Who else was here with you?—A. Mr. Shufeldt was here; Mr. Clark, of Peoria; Mr. Davis, of Louisville; Mr. Kellogg, of Cincinnati; Mr. Gaff, of Cincinnati; Mr. Crichton, of Baltimore; Mr. Sennott, of Philadelphia; Mr. Felton, of Boston; and, for one day, Mr. Beecher, of New York. I think he left after certainly two days; probably one day. Colonel Wharton was here as attorney.

Q. Did you hear any intimations or have any intimations that any of your association had employed any one?—A. No, sir.

Q. Secured the services of any one outside to represent the bill?—A. No, sir.

Q. Have you heard any such intimation since you left?—A. I have not, so far as I have been advised and heard; nobody has been employed, and if so, it is entirely beyond my knowledge and belief.

By Mr. HAWLEY:

Q. Have you ever thought or have you ever believed—do you wish to say now that any of the opposition is due to disappointment of applicants for employment?—A. I do not know that it is. I do not know that is, nor did I say so. When I saw the article in the Herald I was utterly at a loss to account for an attack of that kind, especially upon the people of Kentucky. We feel sensitive under such attacks as that, and such charges, and in the conversation that was incorrectly reported by the Commercial, I was simply surmising as to what may have been the origin of the article, without the slightest shadow of knowledge about it.

Q. Nobody connected with the Herald ever said anything to you about employment?—A. I do not know a solitary man connected with the Herald in any way; never did. It was just simply a surmise of my own to account for an attack of that kind, which I knew was false. I knew

there was no ring in Kentucky, and never had been, and no fraud in Kentucky outside of moonshine.

By Mr. COCKRELL:

Q. Did you have any understanding or agreement with any other interest here that desired legislation, to co-operate with them?—A. No, sir; none whatever.

GEORGE T. STAGG sworn and examined.

By the CHAIRMAN:

Question. Where is your residence?—Answer. My residence is at Saint Louis, Mo.

Q. What is your business?—A. I am there at Saint Louis, a member of the firm of Gregory, Stagg & Co., commission merchants, handling whiskies mainly, and in Kentucky I am the president of a corporation, E. H. Taylor, jr., & Co., owning and operating two distilleries

Q. What sort of whiskies do you distill, and in what sort do you trade?—A. Well, the corporation of which I am president distills sour-mash whisky; one of the houses hand-made sour-mash, and the other what we call standard sour-mash; it is not a hand-made whisky; it is made differently from the others.

Q. In your trade do you deal in both kinds?—A. We handle, as commission merchants, almost anything that comes in our way—alcohol, high wine, spirits, almost anything.

Q. How long have you been here in Washington?—A. I think I arrived here on the 23d day of February.

Q. You came here to assist in the passage of measures in the interest of your business?—A. Well, sir, I cannot say that I did. I came here to see what was going on, what was being done, and to decide whether or not I would be in favor or opposed to the bill which had been introduced.

Q. Well, upon examination of that bill, what was your judgment of it?—A. I concluded I would advocate both the reduction and the extension; the reduction of the tax and extension of the bonded period.

Q. What is the objection in the minds of some gentlemen interested in the same business as yours, to the reduction of the tax? There seems to be a division of sentiment on that subject.—A. Well, I cannot explain why any one should object to the reduction of the tax, except that it would be a man who had very large capital and could afford to credit out large sums over the country, and, by the fact of his having this large capital, crowd out men of lesser capital from the business. That is the only reason I could assume why a man should oppose the reduction of the tax.

Q. Have you favored the passage of the House bill now pending in the Senate?—A. Yes, sir.

Q. Is that the same bill that was originally drawn at the instance of your organization or association?—A. No, sir; the bill that passed the House is not the bill that was presented by Mr. Carlisle on the 13th of February.

Q. What is the difference between the two? I do not mean in detail; but what is the point of difference?—A. The main point in the original bill was the reduction of the tax to 50 cents. That was the main point or starting point. The next was the extension indefinitely of the bonded period, and the reorganization or remodeling of the bonds making them annual in place of monthly; and another feature of the bill was the abolition, or rather the repeal, of the act passed several years ago, which

allowed vinegar factories to ferment, really a process of distillation of alcohol, making spirts for their own purposes; that we wanted to get rid of; and one or two other points.

Q. The bill that passed the House was a modification of your bill, as I understand it?—A. Yes. On the morning following the Republican caucus, which, after discussion, decided not to reduce the whisky tax, the Ways and Means Committee instructed the subcommittee having these questions in charge to prepare and present a bill extending the bonded period. They did so, taking the original bill introduced by Mr. Carlisle, striking out the sections relating to reduction of tax, the fermentation of mash in vinegar factories, &c.; retaining the sections providing for the extension, the modification of, or change in the manner of giving the bonds and the amounts of the bonds, and the special warehouse features. The latter feature was further amended by the full committee, and the bill, as it afterwards passed the House, was, after full and, I think, very careful consideration, unanimously recommended by the Ways and Means Committee. I will add that the present House bill No. 5656 was drawn and prepared by the clerks having charge of the whisky assessment and law divisions of the Internal Revenue Bureau, and was, before being presented to the committee, examined and revised by the Commissioner and Solicitor of the same bureau.

Q. You have been acquainted with all the gentlemen who were here, I suppose, promoting the passage of the bill?—A. I am acquainted with all who have been here since I have been here. I found no one when I got here at all.

Q. Mr. Wharton was not here?—A. No, sir; there was no one here at all.

Q. The Carlisle bill had been introduced?—A. Yes; it was introduced on the 13th of February.

Q. Then how soon after that did the other gentlemen come?—A. I think, perhaps, ten days, about that. I do not remember the dates exactly; it was a week or ten days before any came.

Q. What is the extent of your manufacture?—A. Well, the two houses that I am connected with—I can show you just what it is, I have got the figures, and perhaps it would be better than to guess at it. In one of them, on the 1st day of May we had in the warehouses 15,963 packages.

Q. Do you mean barrels?—A. I mean barrels; and the other one 19,411. That included what was made in 1879, 1880, 1881, and 1882, up to this date, all remaining in bond May 1.

Q. Of that amount how much had been sold?—A. As far as I know and believe, all of it.

Q. What is the extent of your business as a trader in whiskies; I mean as the owner of whiskies in warehouses aside from your interest as distiller; or do you own any?—A. Well, I do not know whether my firm owns any or not. They may; I am scarcely ever at Saint Louis. I have not been there, perhaps, more than a few days at a time for a year and a half, or two years. I own myself half interest in about 350 barrels of whisky. I do the selling for these houses in the Eastern markets, and for another house that is controlled by my firm. I do not think I have sold a barrel of whisky in fifteen months; since last March a year.

Q. Have you paid your own expenses while here, or has somebody contributed to them?—A. I have paid my own.

Q. There has been no contribution whatever then?—A. None to me.

Q. Have you contributed to anybody else's expenses?—A. I have not.

Q. In no way?—A. In no way.

Q. Do you know of any contribution having been raised to promote or defeat the passage of this pending House bill?—A. I do not, sir.

Q. Have you heard of any?—A. I have not heard of any except what has been detailed here by the witnesses.

Q. What organization do you belong to in connection with that business?—A. I am a member of the National Distillers' Association. Being one of the executive committee, and also, through my firm, a member of the Kentucky Association. I have attended but one of its meetings, perhaps two and a half years ago. I do not remember just when.

Q. Has anybody ever spoken to you about being employed to assist in the passage of the bill?—A. Yes, sir.

Q. What did they say to you about it?—A. Well, they had about the same conversation, and were, I believe, the same parties that spoke with Mr. Atherton.

Q. What did they say to you? I want more specifically to know what they said to you. That is exactly in the line of our investigation.—A. Well, one of the gentlemen, directly I came here, remarked to me that he would have liked to have had employment, or liked to have represented the interest of Kentucky distillers in presenting this bill before Congress, but they had ignored him again; and the other one said to me that if they employed any one he would like to represent the National Distillers' Association. He asked me if anybody was here representing it, and I told him I did not know of any one.

Q. Did the first one complain of having been ignored?—A. Well, not especially; he just said they had ignored him again.

Q. Did he make any threats about it?—A. He did not.

Q. Will you give us his name?—A. No, sir.

Q. Why do you decline to give his name?—A. Well, there was nothing wrong passed between either one of them and myself; nothing but what might pass between any two gentlemen. And I do not think it would do them any good or me any good, or be of any value to the committee to get that.

Q. How could it do any harm if there was nothing wrong?—A. Well, I do not know. It would be bringing innocent men before the committee to prove their innocence.

Q. Yes; but would you not prove their innocence yourself upon what you say?—A. I have proved their innocence as far as I can.

Q. Then I do not see why you should object to giving them the benefit of your proof?—A. Well, if they are not named they do not need the benefit.

Q. Yes; but do not these things carry an imputation generally, and would it not be well to exonerate the men who did it?—A. I do not know as it does.

Q. Well, I do not want to argue with you. You say one of them wanted to be employed, and one of them complained that he was ignored again, and you will not give his name. How many gentlemen spoke in that way?—A. Only those two.

Q. Have you heard of anybody speaking of any other gentleman who is representing this interest the same way?—A. Well, I may have heard of others, but it is through others. They can testify for themselves; they may give the names; I do not know.

Q. Did this man who said he had been ignored again convey to you the idea that he felt dissatisfied?—A. Well, I cannot say that he did.

Q. Did any one ever say to you that he could influence any members of Congress?—A. No, sir.

Q. Was the name of any member of Congress or Senator ever men-

tioned in connection with these conversations?—A. No, sir; nor any officer of the government; nor any proposition to do anything but what was, I presume, perfectly legitimate, and I believe perfectly legitimate.

Q. Did you go before the Committee of Ways and Means on the subject of this bill?—A. I did.

Q. Did you ever speak to other members and Senators about it?—A. Yes, sir; members. I believe, with one exception, I spoke to no one in the Senate outside of the Finance Committee, not even to Senators from my own State.

Q. And you have received no money to promote the passage of the bill and paid none?—A. No, sir; in fact I have paid my own expenses every time I have been Washington.

Q. What do you include by the word "expenses?"—A. My hotel expenses, and any money I may expend for anything I want.

Q. Does that mean, if you want influence?—A. I have never spent any for influence. I have never found it necessary as yet. Measures that we have presented here we have presented to the best of our ability. We have never asked for anything but what we believed was right and proper, and, therefore, we have succeeded in getting it, and every feature of the internal revenue, every measure of improvement, every amendment of value to the distilling interest and to the government that has been adopted by Congress since 1868, has been suggested by the distilling interest, and, after approval by the Commissioner, carried through Congress at their own expense, so far as any personal expense was incurred, and for printing or the expenses of attorneys while here. Not a single amendment to my knowledge, of any value, but what has been presented by them or carried through by them or at their request and instance, and there is not a feature of that legislation but what has been of advantage to the government.

Q. Have they not always been supposed to be to the advantage of the distilling interest?—A. Yes, sir; at the same time, because I think what is to the advantage of the government is to the advantage of the distilling interest. A liberal construction of the laws, the liberalizing of laws, has been of great advantage to the government and our own interest too.

Q. Has not this process of liberalizing laws to which you refer been the cause of the present condition of the whisky trade to a great extent?—A. No, sir.

Q. When did the accumulation begin?—A. The accumulation began with what we call the crop of 1881; made in the fall of 1880 and spring of 1881. August 1, 1880, to July 31, 1881.

Q. That was just after the passage of what is known as the Carlisle bill?—A. The Carlisle bill was passed and became a law May 28, 1880, but the Carlisle bill had no more to do with it than any other measure of legislation. It did not extend the time in bond at all.

Q. But it did take off the 5 per cent. interest?—A. It took off the 5 per cent. interest and allowed men to——

Q. What I want to get at is whether the large increase in warehouses did not follow immediately after this legislation?—A. Well, I will tell you what, in my judgment, caused the large increase——

Q. First answer my question. Did it not immediately follow this legislation?—A. Yes, sir; from the spring to the next fall.

Q. Now, then, you may give your reason as to the causes of it.—A. Well, the extension in bond occurred in 1878, while the crop of whisky made in 1878 was a very short one; that, every man in the business knows. The crop in 1879 was a little larger, but nothing like large

enough to meet the demand that sprang up in the fall of 1879. The demand first began in August or September, 1879, and the advance in whisky was so rapid that some of them doubled in value within 60 days, and that caused orders to be taken that fall and winter for every barrel of whisky that could be made the following season, and, even before the Carlisle bill passed, business began to boom.

Q. Just after the act of 1878, as Mr. Atherton told us, the system of selling whisky in bond began?—A. No; it did not begin then. He said it began in 1879, after the act of 1878.

Q. What time did it begin, then?—A. I am interested in one distillery that sold almost all the whisky they made in bond.

Q. Prior to 1878?—A. Prior to 1878; had been selling it for years before I was interested in it. I used to buy the goods, and after I became interested in it, I used to sell them. Nearly all the whiskies sold at that distillery were sold in bond.

Q. Do you not think the act of 1878 very much facilitated speculative transactions in whisky?—A. Well, I thought the return of good times afforded facilities for speculating in everything.

Q. Well, but did not that very measure facilitate speculation?—A. As a matter of course, because it gave men time to hold their goods and get them nearer ready for consumptive purposes than they were before.

Q. Is not the distilling and trading interest in whisky much worse than it was in 1880?—A. Well, perhaps some of the dealers are heavily overstocked, but the distillers are in better fix than they ever were before in the world.

Q. Because they have sold out?—A. They have sold out and have got their money for the whisky.

Q. Was not the price of corn higher last fall than usual?—A. Yes, sir.

Q. Was the crop a particularly good one last fall?—A. No, sir.

Q. Was not the amount accumulated in bond during the months of January, February, and March as great or greater than ever before?—A. Yes. I can tell you why that was. There was not a barrel of that whisky had been sold under a year. The orders for whisky made last August, up to the coming July, were taken in January, February, and March of last year. Contracts were made then for the manufacture of these goods. I sold every barrel we could make in one distillery, in New York, before the end of January of last year, and some of the goods are not made yet; the distillery is still running, and will have to run until the end of this month, and maybe to the middle of next month, to fill the orders.

Q. If an extension of three years of the bond would facilitate speculation would not indefinite extension increase it?—A. I do not think an indefinite extension would increase it to a great extent. We would carry in stock 100,000,000 gallons, which would not be too much. If we had an indefinite extension we could readily carry 100,000,000 gallons in Kentucky and nobody be overstocked. Out of that we could probably draw 15,000,000 or 20,000,000 gallons a year. After we once got stocked we would not make more than that amount; we do not make it to keep in store to look at. Whenever we can sell it we make it; whenever a trader comes up and says he will take it at a profit we sell to him. We cannot look out for the trader's loss.

Q. What effort has been made to sell whisky in bond?—A. I have not made any. I was begged to increase the capacity of our houses in order to execute orders.

Q. Have you had no agents out, then?—A. We have had brokers out for years. We have had one traveling salesman; we make 30,000 or 35,000 barrels a year, and we have one traveling salesman to attend to the western country.

By Mr. COCKRELL:

Q. Have you heard any intimations from any source that any persons were employed here by any persons interested in this bill?—A. I have not heard of any one being employed here except Colonel Wharton and Colonel Moulton.

Q. You have heard no intimations of any one else?—A. None at all.

Q. That any one else claimed to have been employed?—A. None that I am aware of.

Q. I am not speaking of personal knowledge; I am only speaking of information?—A. I have not heard at all, either directly or indirectly.

Q. How many persons approached you?—A. There were but two who ever said anything to me in regard to the matter.

Q. Did any others intimate in your presence in talking with any one else that they had influence and could be of service?—A. No, sir.

Q. Without saying it to you; just simply talking?—A. No, sir.

Q. Did either of these gentlemen you refer to intimate that he had influence with any members of the House or Senators?—A. Neither one of them. I will say this further to the committee, that one of the gentlemen I have known for a great number of years, and the other I have known for several years, and they are both particular friends of mine, and would speak to me about anything as freely as they would talk to anybody in the world.

GABRIEL C. WHARTON sworn and examined.

By the CHAIRMAN:

Question. What is your profession?—Answer. I am a lawyer.

Q. Where is your residence?—A. I live at Louisville, Ky.

Q. Do you hold any relation to the distilling interest in any way as attorney?—A. Yes, sir; I am the attorney for the Kentucky Distilling Association.

Q. You are employed by the Kentucky Distilling Association?—A. Yes, sir; the executive committee of the Distilling Association, of which Mr. Buchanan is chairman.

Q. When were you employed?—A. Some time in December.

Q. What time did you come on here?—A. I came here about the first of January.

Q. What did you do in connection with this measure or anything that has been before Congress touching this interest?—A. In the first place there was a committee of distillers here, about seven or eight, representing the Kentucky distilling interest and the high-wine and alcohol interest, and there was quite a conflict of opinion among them as to what extension should be had, how the bill should be prepared; we were engaged during the month of January drawing bills and discussing them and determining what the distillers wanted themselves. Then, with a committee appointed by the Commissioner of Internal Revenue, consisting of the officer in charge of the bonded system, the officer in charge of whisky before it goes into bond, and the attorney for the revenue office, to look after the interest of the government and to guard its interest, this bill was prepared. I, with the assistance of the committee of distillers, wrote out what we wanted, and it was put in such shape by those officers that the revenues of the government would be protected if Congress thought proper to adopt the legislation suggested and desired.

Q. The bill that you prepared was introduced?—A. Yes, sir; I did not prepare it myself; I drew it in conjunction with those other parties.

Q. By whom was it introduced?—A. I think it was introduced by Mr. Carlisle?

Q. What do you understand to be the various interests, distilling and merchants, connected with the whisky business, as to these bills now?—A. The particular interest that the gentlemen who employed me, at the time I was first employed, was the extension of the bonded period.

Q. That was the interest that you chiefly represented?—A. That I chiefly represented. I was asked by these gentlemen to come to Washington and report to Mr. Shufeldt, the president of the National Distillers' Association, who would be here, which I did. I found Mr. Shufeldt willing to co-operate with the people I represented; to have a bill both reducing taxes and extending the bonded period.

Q. Did you go before the Committee on Ways and Means to argue the question?—A. I did; yes, sir.

Q. Will you state to us what compensation was to be allowed you?—A. It has been stated here, sir. Mr. Atherton has stated it correctly.

The CHAIRMAN. $5,000 a year?

The WITNESS. I expected not to be here longer than the session of Congress.

Q. It was for this purpose?—A. Yes, sir; and to do whatever they might wish in their interest in the departments at Washington.

Q. Were you to have any allowance for your expenses?—A. None at all.

Q. Have you had the use of any other money except that?—A. I have not. I have not known a dollar to be expended in or about this bill, directly or indirectly, in any way. All the money I have expended, or known to be expended, was $35 for printing a brief, which I presented to the Finance Committee of the Senate, and $50 paid to the Public Printer, to publish speeches to be circulated in the trade, which last had nothing to do with this business, because the speeches were distrib uted for the information of the people interested in the trade.

Q. Have you had the assistance of anybody except the gentlemen who came from various localities representing their own interest?—A. No, sir; no one at all, except the gentlemen who come hrere representing their own interest.

Q. Do you know how those gentlemen are paid?—A. I do not. I understand Mr. Atherton came at his own expense; Mr. Stagg came at his own expense. I suppose Mr. Shufeldt and Dr. Rush, who are officers of the association, had their personal expenses borne, and I believe Major Thomas has his personal expenses borne. That is all I know or ever heard about the expenses. All the other gentlemen who have been here informed me that they paid their own personal expenses, and did not expect any remuneration from any one.

Q. What do you mean by personal expenses?—A. I mean hotel bills, and what a gentleman expends on himself.

Q. You have never heard any intimation which extended to anything else?—A. Never. On the contrary, I have always understood it did not. I will say to this committee that I have been intimately associated with everybody who has been here, and I do not believe that there has been a dollar expended in any way.

Q. Have you had any applications from other people to be interested in it?—A. Yes, I have; about the hotels, various men, who said they represented interests before Congress, have suggested to me that they would like to be employed; this in private conversations.

Q. What was their business?—A. They said they were lawyers, and I know that they were lawyers.

Q. Have any newspaper men ever approached you in any way?—A. In no way, except to get news. They have been very anxious to understand the bill, and have been very kind in doing what they could to understand and learn what were its provisions, and to send the truth as soon as they could. This is all that I have known connected with the press—with reference to the bill.

Q. Do you know of any compensation ever having been made or offered to any one?—A. Not one cent of compensation, nor have I been asked for any by any member of the press.

Q. Or any promise?—A. No promise in any way. They seemed to be gentlemen representing their papers who desired all the news with reference to this legislation, and to have all the informations.

Q. Have any members of Congress or Senators ever in any way approached you to render assistance?—A. I have talked with quite a number of members of Congress and Senators about the matter; endeavored to explain the bill to them.

Q. Have any of them ever proposed to assist you in any way?—A. No, sir. Well, some of them have said that they would vote for the bill, while others have said that they would vote against it. Some I was able to convince that the bill was right, and some I was not able to convince.

Q. Will you give us the names of those gentlemen who wanted employment?—A. I would rather not.

Q. Why?—A. For the simple reason that they were not employed. They solicited the employment, and I did not give it; and for the further reason that it would bring these men into reproach, because it has been heralded all over the country that there has been a lobby here trying to influence action on this bill improperly. I have no knowledge that these men did such thing. I, therefore, think it would be unjust to them to give their names, and have them called to answer for merely soliciting employment, which was declined.

Q. Did any of them ever intimate that they could influence members of Congress?—A. Not one; no one ever proposed to influence any member of Congress, Senator, or officer of the government.

Q. Was the name of any Member or Senator mentioned in connection with it?—A. No, sir. All that could be said as to what they did is that they were a little immodest in the offer of their services as lawyers. This is the whole thing, and that is all the committee will find if they learn the names. I do not care to tell them. The applicants were not, and have not, been employed, and no one of them has been employed. I would not do such thing, but if I were to solicit a person's influence to have me employed as a lawyer, and I was not employed, I would dislike to have him tell that I had made the request.

Q. What particular legal advice was necessary in this thing?

The WITNESS. What?

Q. What sort of legal knowledge or advice was necessary in this thing?—A. Well, it seems to me there was a great deal required, because there seems to be a great difficulty in understanding this legislation.

Q. Did you understand that those gentlemen thought they could assist you in drawing the bill?—A. Oh, yes, they seemed to have quite an idea of their legal attainments and merits.

Q. Is that the impression made upon you, that they wished to be employed in drawing a bill, or employed in bringing influence to bear?—A. My impression was that they wanted to influence the passage of

the bill; that was my impression. I did not think they wanted to draw the bill; I did not think they wanted to do that much labor.

Q. Then their knowledge or ability as attorneys would not have had much to do with it? It was rather more in the capacity of lobbyists they wanted to be employed than as attorneys?—A. No, they put it to me in the form of attorneys. They put it in an entirely unexceptionable way.

Q. Have you heard of any contributions anywhere of any kind except these that have been spoken of here?—A. None at all. I have no idea there have been any raised.

Q. You know of no money that has been raised, then, except what we have heard of here?—A. No, sir.

Q. And have heard of none?—A. And have heard of none, and do not believe there has been any raised.

Q. Have you heard of any efforts to raise any that did not succeed?—A. None at all.

By Mr. HAWLEY:

Q. Have you any knowledge, direct or indirect, that any member of either House has ever received any consideration, present or contingent, by reason of the pendency of this legislation?—A. I know of no such case; do not know of any member of Congress or Senator either asking for or receiving any compensation. I have no knowledge or information that there is any compensation to be made in any way to any one of them. The fact and the truth is, gentlemen, that until this bill got into the Senate—until it was presented to the Finance Committee of the Senate—I had never found a man in Washington, member of Congress or Senator, who was opposed to the bill. There was no need of any employment. Every member of Congress that I ever talked to was in favor of the bill, from my own State and everywhere. I never met one who, upon a full investigation of the bill, was not in favor of it.

Q. Was the bill debated at all in the House?—A. Not in the House, but it was very thoroughly debated before the Ways and Means Committee. I think a dozen or more speeches were made, first and last, about it. It was very carefully prepared—a great many people were examined. It was left open, it was printed four or five times, unimportant changes made in it. The only member of Congress, so far as I heard, who opposed this bill was after it had passed the House; or the first I heard of it was one member expressing opposition when it was on its passage in the House. Up to that time I had never heard of a member of Congress who was opposed to the bill. Every one I ever talked to about the bill, and to whom I had an opportunity to explain it, gave his assent and thought it was right.

Q. Had the Secretary of the Treasury expressed any opposition to it?—A. Never, until after it had passed the House.

Q. Did you ever confer with him upon the subject?—A. Not until after it passed the House. When it came to the House I had a long talk with the Secretary of the Treasury upon the matter. I discussed the bill with him. He announced, however, at the outset, that he was opposed to the bill. He was the first man that I saw that was opposed to the bill; so that there was no necessity for the employment of any one up to that time. I was here three months and found no opposition anywhere. I thought it was just perfectly plain sailing.

By Mr. COCKRELL:

Q. Did any Senator or Member approach you and mention the subject, intimating that he could render services?—A. No, sir.

Q. The only ones with whom you conversed were those you approached yourself as attorney to explain?—A. I announced to every one that I was the paid attorney of this Kentucky Distilling Association. I talked with a great many members of Congress and Senators about it; they were kind enough to take the bill and go through it with me, and read and study it—inform themselves. After the charges of fraud had been made, I thought it was improper to approach any Senator on the subject, and after this investigation had been moved by Mr. Windom, I never have approached any Senator except to ask the chairman, through Mr. Hawley, what were our rights before the committee. After the charges were made, I thought it was manifestly improper, until they were cleared away, to speak to another Senator about the bill, and I have forborne to speak to any Senator in any way since the charge was made in the Senate that there had been fraud.

Q. Is there any combination, or understanding, or agreement with any other parties here seeking any kind of legislation that their interests should be blended with your interests to co operate with each other?—A. None; except the different kinds of distillers. The distillers in the Northwest combined with the Kentucky distillers, but no other interest is combined. I will say that I have never presented a case in court with cleaner hands than this one has been presented to the Senate and House of Representatives. I know of nobody being employed, and I know there has nobody been employed, except as above stated.

Q. Have you heard any intimations or rumors, directly or indirectly, that any person claimed to have been employed by any one here?—A. I have not; none at all.

Q. That any one was stating that he was employed and representing these interests?—A. No, sir. On the contrary, I have been singularly free from that. I have heard we were charged with fraud, but I have never heard that anybody else was representing themselves as counsel or attorney in any way.

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WASHINGTON, D. C.,
*Monday, June* 5, 1882.

HENRY H. SHUFELDT, sworn and examined.

By the CHAIRMAN:

Question. Where is your residence?—Answer. Chicago, Ill.

Q. What is your occupation?—A. Distiller.

Q. State your relations, if any, to any organization of distillers or others interested in the whisky trade.—A. I am president of the National Distillers' Association, and a member of the Western Export Association.

Q. How long have you been engaged in the business?—A. Twenty-four years.

Q. What sort of whiskies do you produce?—A. We manufacture all kinds made in the northwest; some similar to Kentucky; we also manufacture alcohols and spirits for chemical and scientific uses.

Q. Where are your works?—A. At Chicago.

Q. In the city?—A. Yes, sir.

Q. What is their capacity?—A. Three thousand six hundred bushels per day.

Q. Are you also a dealer?—A. Yes, sir.

Q. At what price are the kinds of whisky you manufacture sold?—A. Well, they vary. Are you speaking of the bonded price?

Q. Yes; exclusive of the tax; that is bonded?—A. They range from thirty cents to forty-five cents.

Q. Are they the kind that is benefited by bonding?—A. Part of them are; the others are not.

Q. Have you a bonded warehouse at Chicago?—A. Yes, sir.

Q. About what is the amount of whisky in it?—A. Well, I should think about in the neighborhood of eighteen thousand barrels.

Q. When was it deposited in the warehouse?—A. All within probably the past year.

Q. You are still manufacturing; your works are still running?—A. Yes, sir.

Q. When was your organization, known as the National Distillers' and Spirit Dealers' Association, organized?

The WITNESS. When was it formed?

The CHAIRMAN. Yes.

A. On the 21st and 22d of August, 1879.

Q. You have had regular annual meetings since that time?—A. Yes, sir.

Q. Do you remember the time of your meeting in 1880?—A. It was October 12, I think; I am not sure.

Q. It was October 12, in 1881. Have you the proceedings of 1880?—A. No, sir; I have not. I thought I had them, but I have not.

Q. You have seen this copy of the proceedings of 1881, I suppose (exhibiting it)?—A. Yes, sir.

Q. Tell the committee, if you please, what was the object and purposes of the organization.

The WITNESS. May I read it from the constitution?

The CHAIRMAN. From anything that you please; yes.

The WITNESS read as follows:

The objects of the association shall be the protection and advancement of the interests of its members; the gathering and distribution of statistical and other information concerning the domestic and foreign trade in spirits; the devising and soliciting of appropriate legislation, and the modification or repeal of needless and obstructive laws and regulations; the guarding of the common interest against the encroachment of fanatical intolerance; the promotion of personal and commercial advancement; the devising, whenever practical, of means of limiting production to the demands of the trade, so as to secure an adequate return for the capital invested in the business, and the labor and risks involved.

Q. What do you read from?—A. I read from the constitution and by-laws and proceedings held at Peoria, August 21 and 22, and at Cincinnati, November 20 and 21, 1879.

By Mr. COCKRELL:

Q. Of what constitution and by-laws?—A. Of the National Distillers' and Spirit Dealers' Association of the United States.

By the CHAIRMAN:

Q. Allow me to look at it. Did you wish to quote from it further?—A. Yes, sir; I may. (Handing it to the chairman.) The constitution and by-laws are in the back part.

Q. Have you any objection to making this part of the evidence?—A. Certainly not.

Q. Or such parts of it as we may choose? I do not know whether we desire to have the whole or not until I look at it.—A. It is merely the proceedings of the meeting. It has nothing of interest, except, perhaps, the opening remarks.

Q. Well, it may be put in evidence then—such parts as we please. I have not looked at it at all.—A. I have no objection.

Q. You were not present at the meeting at Chicago in 1881. You were ill?—A. No, sir; I was not there.

Q. You sent an address, however, that was read?—A. Yes, sir.

Q. That was a written address you had prepared to send to the meeting, was it not?—A. Yes, sir.

Q. You have seen it as reported?—A. Yes, sir.

Q. It is correctly reported, is it?—A. I think so, sir.

(The following is a portion of the proceedings referred to.)

Extract from Mr. Shufeldt's address:

One matter has proven a source of very great embarrassment to your officers. I refer to the appeals that have been made to us for monetary assistance from locations infected with the prohibition craze. These applications have come from members of the association as well as from those outside of our organization. In no case has the condition of our treasury admitted of our contributing anything in this direction, though I am convinced that no more judicious use could have been made of our funds had we had them to give. Hoping that we might be able to strengthen our hands in this respect, we prepared and sent out to the entire trade of the country an appeal, calling on those in our business to join the association and forward to our treasury their dues, and accompanying this circular we mailed several thousand copies of the pamphlet containing the report of the proceedings of our last annual meeting, and setting forth what the association has accomplished in the past as well as what it proposes to do in the future. The result of this effort to increase our membership fell far short of what we had anticipated, and the additional dues received were barely sufficient to meet the expense we had incurred for printing and postage.

While our membership has increased somewhat since the date of our last meeting, it is still very far from what it should be to render our organization effective in thoroughly guarding and advancing the interests of the trade, whenever they are assailed or threatened. The records of the government show that of registered distillers and licensed wholesale dealers there are about 10,000. Certainly one-half of this number should, and I believe with the proper effort could, be brought within our organization. A membership of 5,000 would give us, in the way of annual dues, at $10 each, $50,000, to say nothing of the extra assessments exacted of and cheerfully paid by the distillers. With $50,000 annually at our command, I feel confident that the association would find little difficulty in staying the wave of fanaticism and intolerance which, if not checked, threatens to sweep over a great portion of our fair land. There would no longer arise a necessity for the calls that are made with singular regularity upon individual members of our trade during each recurring session of our State legislatures. The fund thus equally and equitably derived from the many, while it would impose a burden upon none, would prove a great relief to those few who have annually sustained this tax. There would also be some guarantee that the funds thus raised would be both honestly and effectively applied. I believe it to be the mission of our association to guard our business from oppressive and destructive State legislation, no less than it is its mission to promote the enactment of friendly national laws, and defeat, so far as possible, the passage of those inimical to our interests and our prosperity. I would, indeed, recommend the appointment of a special committee at this meeting to take charge of this work, and this committee should be composed of the most intelligent and trustworthy members of our association.

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Mr. PRATT, of Chicago. In pursuance of the recommendations made by the President, I would like to offer this resolution:

"*Resolved*, That appreciating the importance of enlarging the membership of this association, and thereby enlarging its usefulness, we fully indorse the recommendation of our worthy president, and hereby resolve ourselves into a committee of the whole on membership, and pledge our individual efforts, one and all, to bringing members of the trade within our organization."

Mr. MOHR, of Ohio. I move to amend the resolution by saying that the officers of this association be empowered to employ a person or persons to solicit subscriptions on percentage or salary.

Mr. STERN, of New York. I would like to offer an amendment to that amendment, as follows: "That a local committee be appointed for each State or town represented in the association with full authority to procure members." I am led to this principally from the fact that the city of New York, which should have as large a representation as any other point, has about the smallest, and I attribute it to the very reason that there is nobody there to attend to it.

The CHAIR. We have tried the first plan. We can't do anything without the local influence.

Mr. PRATT, of Chicago. I would only say in support of the resolution as I offered it, that I have heard directly from Mr. Shufeldt, our president, a few fac s regarding the present membership of the association. There is one gentleman who, I know, has presented the names of fifty members to this association. As we have about 500 that gentleman has procured about one-tenth of our members; other gentlemen could have done just as much, but not feeling the importance of it, have not given it the necessary attention. I know the officers of the association earnestly desire that those present at this meeting should make it their individual duty to canvass their neighbors and customers, and to get them into the associat'on. Our president says we ought to have a membership of 5,000, and that with 5,000 members the result would be we would have a repleted instead of a depleted treasury, and the association would be able to carry out the suggestions contained in his address. Without that membership we can't have such a fund, and without that fund it is impossible for us to carry out those recommendations.

Q. Mr. Shufeldt, something has been said by Mr. Atherton about a collection made at Louisville and forwarded to you?—A. Yes, sir.

Q. What was the amount of that that you received?—A. I received $4,000.

Q. Just $4,000?—A. Just $4,000.

Q. Was there any communication with it; any letter accompanying it?—A. Well, not that I remember.

Q. Who sent it to you?—A. I think Mr. C. P. Moorman. The remittance was by New York exchange.

Q. Was he the secretary of the meeting at Louisville?—A. I do not know; I was not there.

Q. Do you remember any direction given at all with it when it came to you?—A. I remember the talk I had regarding it with Mr. Atherton; yes.

Q. Do you remember anything in connection with the communication when it was transmitted to you?—A. No, sir.

Q. Have you in your possession the letter transmitting it?—A. Well, I may have; but I do not really know, because I do not keep all those things; they are not necessary. I merely acknowledge receipt of them.

Q. Have you no recollection at all of the direction accompanying it, or any indications given as to what it was to be used for?—A. All that I heard of it was at my visit in Louisville.

Q. How long before that had you been in Louisville?—A. That I do not know.

Q. Was your visit to Louisville in connection with that business in any way?—A. It was in connection with this first bill we had here. I went on to see about the feeling—how they felt about it as it stood.

Q. That was the bill that Mr. Carlisle introduced early in the session?—A. Yes, sir.

Q. It was the bill, I suppose, reported by Mr. Dunnell with amendment?—A. Yes; but it had been changed very much from the time we first took hold of it.

Q. But that is the bill you refer to?—A. Yes, sir.

Q. You went there in the interest of that bill. Now, I understand you to say that you had an understanding of what the money was to be used for there. What were those understandings?—A. That this $4,000 should be set aside for the reduction of the tax by expending it.

Q. With whom did you have conversations there on that subject?—A. Mr. Atherton particularly.

Q. Was it arranged between you and him that there should be money raised for that purpose in Louisville?—A. No, sir; it was suggested that the money be raised.

Q. Was the amount suggested?—A. Yes, sir.

Q. What was it?—A. I think it was $5,000.

Q. As Louisville's proportion?—A. Yes, sir.

Q. Then did you make efforts elsewhere to raise money?—A. I did, after awhile; yes, sir.

Q. Had Mr. Atherton agreed to raise $5,000, if he could, or give any assurance that it would be raised?—A. He gave an assurance that it would be raised; yes, sir.

Q. You do not remember, then, when the money was sent that there were any directions at all accompanying it as to what was to be done with it?—A. I think the money reached me some time in the latter part of April.

Q. Was it not understood that you, as president of this association, had charge of matters here?—A. Yes, sir.

Q. And was it not sent to aid in that?—A. No; not to aid in the legislation then pending. It was sent to get a committee of people, the members of the association and attorneys in Washington, to go on with the tax reduction.

Q. Yes; but that bill which you say was pending at the time you had the talk about the money, did include a reduction of the tax, did it not?—A. I think that was taken out by the caucus convention on the 16th day of April, wasn't it?

Q. I do not remember when it was. But you said, as I understood you, that this money, when you talked about it in Louisville, was with reference to the original bill, which bill included, as Mr. Wharton told us the other day, both the reduction of the tax and the extension of the bonded period. Now, was not your conversation with these people in Louisville at the time that the bill was pending and you expected to pass it?—A. Well, that I do not know, sir; but I do know that this money was for the reduction of the tax. It was to be expended for that only, and to be set aside for that; when that occurred I cannot now tell, but that was the impression on my mind, and has always been so since.

Q. At what time was this Republican caucus you speak of as having decided not to reduce the tax?—A. I think it was in the middle of April some time. I don't remember the date.

Q. Well, then, on the 16th of April this money was raised in Louisville; at least, the resolution was passed?—A. I do not know at what time. I have never seen that resolution.

Q. Well, was it in April that you visited Louisville?—A. I think so.

Q. Was it after the Republican caucus met?—A. I think so, though I cannot now state; these things made no impression on my mind, because I paid no attention to them.

Q. Were not you interested in the extension of the time, as well as the reduction of the tax?—A. Yes, sir.

Q. Were not the western people very much provoked at the adoption of the bill, and they would not do anything, and it was sort of an offer made by the Louisville people that if you could possibly get the Northwestern influence with members of Congress and let that bill go on, then the Louisville people would contribute this money to the reduction of the tax?—A. Yes, sir.

Q. Then they raised this money partly as hush money to you people of the Northwest?—A. No, sir; it was not hush money. It was money to be expended here, and they would have to expend it afterward.

Q. Well, you say they felt quite satisfied with having to contribute to the reduction of the tax, and they raised this money to secure cooperation as a trade between you and them so as to help you carry the

reduction of the tax?—A. They raised this money for that purpose to be expended in that way, and that way only.

Q. That is for the reduction of the tax only?—A. Yes, sir.

Q. Well, they were not immediately interested in the reduction of the tax?—A. I think they were.

Q. Well, why did they want to make a trade?—A. Because a good many people in Kentucky, and in the fine whisky business, were very anxious to get this bond bill through, and they thought if the northwestern people opposed it they could not get it through.

Q. Hence they raised money to satisfy the other people; they were in good faith working for the reduction of the tax, and at the same time they were working for bonded extension?—A. Yes, sir.

Q. Thereby hoping to induce your people of the Northwest to favor bonded extension?—A. Not to favor it; but not to do anything opposing it.

Q. This money was not raised, according to that statement, to help the bill through, but as a sort of bonus to your people to keep quiet—not to oppose it, as was said awhile ago. Was that money raised to help pass the bill, or to help keep you gentlemen quiet?—A. It was to help get the bill through Congress, reducing the tax on whisky.

Q. And thereby to satisfy the people of the Northwest, who feel more interest in that than they do in the bond extension. Was not that it?—A. Well, I do not see that that changes it. That was exactly the case. These people said that with the influence of the Northwest they would pay the expense so far as that could go for the reduction of the tax, and let the bill go on and be divided.

Q. But the understanding then was that there should be a bill introduced for the reduction of the tax?—A. Oh, certainly.

Q. Why has not that been done?—A. Because we have been waiting for this bonded bill to get out of the way first.

Q. But the two seemed to be working in harmony when the friends of the bonded bill raised money to help the other people. I do not see why they don't work together. Why have you delayed so up to this time?—A. Well, we haven't delayed it, except at the request of these fine whisky men that we keep one side until this bonded bill is passed. That is the truth of the matter.

Q. So they did want you to bring it in at some future time when you got ready to bring it in?—A. That is it exactly.

Q. Where is that money now?—A. I have it in my possession.

Q. You are reserving it for the reduction?—A. Yes; it is set aside separately for that purpose, and I have it now; every dollar of it.

Q. Did you not ever raise some money yourself?—A. I did.

Q. How much?—A. Three thousand five hundred dollars.

Q. Was that raised exclusively to procure the reduction of the tax?—A. No, sir; it was put into my hands for any purpose or uses I saw fit—prohibition, or anything in that line. We have had a great deal of trouble in the Northwestern States during the last year or two, and this money was raised for anything I saw fit, and I have used it mainly in prohibition.

Q. What time was this money raised?—A. Late in April.

Q. Of this year?—A. Yes, sir.

Q. You say you have used it on the prohibition; how?—A. I have done it by passing it through prohibition people who were coming after subscriptions for prohibition.

Q. Do you mean to help pass prohibitory laws?—A. No; anti-pro-

hibitory laws; that is what we were after. We have got to do this fighting all the time.

Q. Well, your answer was a little indefinite, because I have heard it said that the prohibitory laws increase the consumption of whisky.—A. Well, I think they do, sir.

Q. Then you have really contributed to help pass them?—A. No; I contributed for anti-prohibitory laws.

Q. Then, so far as the temperance question is concerned, you are rather on the side of temperance? You think that temperance legislation increases consumption, and you have contributed money to procure the passage of laws that increase consumption? Therefore, I suppose you are on the side of less drink. That is an argument, however, I will not ask you to answer. Now, Mr. Shufeldt, to whom did you send that money; to legislators, or to anybody connected the with legislatures?—A. No, sir; I have not.

Q. Was it to be used before any legislatures?—A. No, sir.

Q. How do you use it, then; in what way?—A. Well, we have got matters; calling meetings and things of that kind, publications of anti-prohibition articles, &c. There is a great many ways for the use of money in that way.

Q. You have had a good many difficulties of that kind in the past, have you?—A. Yes, sir.

Q. I judge so from your address before the convention. You speak, in that address, of the regularity with which calls are made upon your individual members during each recurring session of your State legislatures.—A. Yes; in regard to sumptuary laws.

Q. In what way are those calls usually made?—A. We have them by subscription. They come in, perhaps, from Kentucky, from different houses in the State. For instance, in the State of Kansas we distribute to several houses of the larger class, and then they distribute as they see fit. We do not know what becomes of the money.

Q. Are those subscriptions quite numerous, as a rule?—A. Yes; they have to be for the last few years in Kansas, and in Ohio on account of the Pond bill; and then in Michigan we have had a good deal to fight, and have spent a great deal of money there.

Q. Was that money usually spent at the time the legislature was in session?—A. No, sir; it was spent at other times.

Q. You call public meetings, and have addresses and all that, but how is it used on newspapers, in what way?—A. It is used in trade newspapers a good deal.

Q. Can you give us any detail of the uses of money to influence legislation, what State?—A. I do not think I have ever given any money for the use of legislation, although I do not know what this committee has to do with this matter.

Q. No; perhaps not strictly within the rule; but then a great deal has been said that this charge was very unjust, that money was used to influence legislation, and therefore I supposed you would be glad to say that you never had used it even on any legislation. Have you in any case?

Mr. G. C. WHARTON. We say this charge is unjust and untrue as to this Congress.

The CHAIRMAN. Mr. Wharton, you were dismissed Saturday. I am speaking to Mr. Shufeldt. Counsel are not testifying before this committee.

Mr. WHARTON. Are they not allowed to appear before this committee by counsel?

The CHAIRMAN. No, sir.

Mr. WHARTON. I ask your pardon, I asked you that question in the Marble Room ——

The CHAIRMAN. And I distinctly said they would not have counsel, but you would be permitted to testify.

Mr. COCKRELL. Even if you were counsel you could not take anything out of the mouth of the witness.

Mr. WHARTON. I do not mean to be disrespectful, nor did I mean to testify, Mr. Cockrell. I merely meant to state that this charge was untrue.

The CHAIRMAN. I merely suggested, as kindly as I could, that we did not have counsel, because there would be no end of the investigation if we did.

Mr. WHARTON. Did I not understand from you that these gentlemen could appear by their counsel?

The CHAIRMAN. That was an entire mistake. I said you could be here.

Mr. WHARTON. Very well, I hope anything I said will be withdrawn from the notes.

The CHAIRMAN. I did not mean it as a rebuke, but did not want you to testify for the witness; that is all.

(To the witness.) Have you, in any case—you can answer that question or not as to State legislatures—have you used anything to influence legislation?

A. No, sir.

Q. But you cannot say positively it was not so used?—A. No, sir.

Q. You collected money in April, $3,500?—A. Yes, sir.

Q. Has that money all been expended?—A. No, sir.

Q. How much has been?—A. About $1,400.

Q. Have you spent any part of it in Washington?—A. The secretary did draw out of this fund $426, and I came here once during the pendency of the bill, and spent $92.

By Mr. COCKRELL:

Q. Who is the secretary? Give his name.—A. D. G. Rush, of Chicago.

By the CHAIRMAN:

Q. Did he send on money here, do you say?—A. Yes, sir.

Q. Is he here now?—A. No, sir.

Q. He drew it while he was here?—A. He drew it while he was here, and paid his hotel bills when he left.

Q. That is in addition to the other $1,400 you expended, or is that included in the $1,400?—A. No; it is besides that.

Q. Of whom did you collect the $3,500?—A. I got $1,000 in Lexington, Ky., $1,500 in Cincinnati, and $1,000 in Pennsylvania, all from those men interested in the fine grades of whisky. I never offered to collect a cent from the northwestern distillers, and they have never paid a cent, and there has never been an assessment made against them by the National Distillers' Association that I am aware of.

Q. I do not understand why it was that while the northwestern people were interested in these laws as well as the others, that all this money should have been collected from a particular class of distillers?—A. Well, it was to make them stand by this reduction bill when it came up.

Q. But they had a bill of their own pending that you were all interested in. I do not see why it is that your people in the Northwest should

not have contributed some. There seems to be a mystery about that to me. I do not quite get at the bottom of it.—A. They have never been called upon.

Q. Why not?—A. Because we did not want any more money than we had. I could have collected more money.

Q. Yes; but you collected this money in the South and in Pennsylvania. You needed money; then why didn't you call upon the other class of distillers?—A. We did not need any great amount of money; at that time we did know what this was going to cost. I wanted to make these men pay up, and I merely applied to the fine whisky men.

Q. Do I understand, then, that the men who wanted the bonded bill paid up because they were afraid of opposition to their bill from the other class of distillers?—A. Yes, sir; they were afraid.

Q. And the contribution was made for that purpose, then, to satisfy those other people?—A. Yes, sir.

Q. Have you any arrangement as to when that other bill will be introduced?—A. No, sir.

Q. No understanding about that?—A. No, sir. We are watching it now very carefully, and we will have a committee of our people here just as soon as it is necessary to take steps toward it.

Q. But there is no antagonism between the two bills—no reason why they should not go together, is there?—A. We thought so when we framed it, but the Republican caucus sat down on us, and we dropped it.

Q. Well, they will sit down on this separate bill just as well.—A. I do not know whether they will or not. We may be able to get this in the shape of an amendment. It is very necessary this reduction of the tax should be passed. People have no knowledge of it. The Senate and House of Representatives of the United States do not know anything about it. Heretofore we have had a very large business in alcohol for home uses in the industries, the arts and sciences, and on this we are taxed ninety cents per gallon. Ninety cents a gallon on the alcohol makes $1.72. Now, if a man buys three or four pounds of shellac gum, at fifty cents a pound, and puts it into a gallon of alcohol, he has got his varnish up to $3.75 a gallon, and the consequence is he cannot make it. That is why we wanted the tax reduced. For the last year we could not export to Germany unless we paid a bonus, on account of the very great quantity of potatoes in Germany, and therefore cheap alcohol. Instead of being forced to send the alcohol to Germany, if we could get a reduction of the tax to fifty cents, which on the alcohol gallon is $1.72, we could use all this alcohol, where we are now forced to export, in the industries of the West, and for that interest I appeared here.

Q. You think there is more necessity for the reduction of the tax than the extension of the bonded period?—A. I do in one way. It is more benefit to our trade. But here are our customers all loaded down, from Maine to Galveston, with these abominable Kentucky whiskies. They are loaded down; and day before yesterday, Saturday, I got a telegram from Boston that another customer there had failed because he was loaded down with these Kentucky whiskies; and that is already three calls we have had in two weeks, and we are getting tired of it.

Q. Is your trade in any worse condition from the over supply of Kentucky whiskies, as you call them, than it has ever been before?—A. I suppose the trade are, but the distillers not. If the distillers had

the whiskies I would not care; but they are making our customers suffer, and we suffer.

Q. What is your understanding of the quantity of whisky the distillers have?—A. Unless we get this bonded bill passed they will flood us with 33,000,000 gallons in 1884. They have never taken out over 7,000,000 or 8,000,000 gallons a year, and therefore they will take out five or six years' supply in one year.

By Mr. HAWLEY:

Q. That is two years ahead?—A. No, sir; they are unloading their goods now to get rid of them.

By the CHAIRMAN:

Q. You speak of the distillers not having them on hand. What proportion do the distillers have to the traders?—A. Oh, they have sold them off. If John M. Atherton here had his 90,000 barrels of whisky we would be safe. Instead of that their customers have got them, and we have got to suffer.

Q. To what do you attribute that condition of things?—A. Well, sir, to the Carlisle bill.

The CHAIRMAN. Just as I do.

By Mr. COCKRELL:

Q. That is the extension of bond?—A. Yes, sir; no doubt about that, but how are we going to get out of it now? The only way we can get out of it is to extend the time so long as to save such warehouses. They never can unload. They keep them in there. They have done that; nearly all.

By the CHAIRMAN:

Q. There was no trouble under the law of 1868 so far as accumulations were concerned?—A. No, sir; because they had to take them out, I think, at the expiration of one year.

Q. Do you know how these sales have been made; have the distillers sent agents over the country to traders to sell them?

The WITNESS. These Kentucky goods?

The CHAIRMAN. Yes.

A. Yes; they have been trying that now for two years from one to another until everybody has got them.

A. What were the arguments used? Now, you are in the business and know. What arguments were used to induce purchasers to so large an amount?—A. I do not know. It was past finding out to me. I knew it would break, and never owned a barrel of it, and didn't want any one else to, but they were foolish enough to get them, and, as I say, we have lost three customers within as many weeks.

Q. What will be the effect if the whole amount is thrown upon the market?—A. No effect at all, except to stop our works.

Q. You cannot afford to compete with the whiskies that would be turned loose?—A. They would sell at a less price, probably, than we could make similar whiskies for.

Q. What is the number of the membership of your organization?—A. It is very small this year. We used to have a membership of four or five hundred, but this year they fell out; didn't pay their dues.

Q. What were the dues?—A. Ten dollars on the wholesale dealer, and $20 on a house of a certain class, and $30 for the largest amount paid by the distiller.

Q. You say you raised $3,500 in April. Have you raised any other

money within a year?—A. No, sir; there has never been any other money raised at all.

Q. That is the total amount you have received?—A. Yes, sir.

Q. Is that in addition to the regular dues; is it contributions outside of the regular dues?—A. This money was sent me, and raised by me, for use by me, outside of the National Distillers' Association.

Q. What amount has the National Distillers' Association raised?—A. When I was in Cincinnati, Mr. Stevens told me he had collected for the whole year $1,800, and I knew that the expenses for the past year were as much as that, if not more; and I thought he could not have anything in the treasury. And I was astonished when he said the other day he had $1,300, which he said he had collected by drafts.

By Mr. COCKRELL:

Q. That is the admission fees?—A. Yes, made in the form of drafts.

By the CHAIRMAN:

Q. Have you made any special efforts to increase your organization?—A. No, sir; we have not.

Q. Have you spent any time in Washington since this bill has been pending?

The WITNESS. The bill 5656?

The CHAIRMAN. Yes.

A. No, sir.

Q. You have not been doing anything about it?—A. I have not been here since it was drawn, except one day. I came on to consult with gentlemen, and was called home at night by telegram.

Q. You know nothing about any effort to get employment here by any person?—A. No; no one never came to me in any shape or manner.

Q. Have you any information from others on that point?—A. No, sir; I have not. I have not been here since the 5th or 6th day of February. When I left here, the original bill—that is the bill where we had all these different matters in, helping all the different interests, including one or two that I have not stated to you—we prepared the bill after two or three weeks, hard work, ten of us, and we could not get it right, and we worked and worked and worked, and finally got it into the Ways and Means committee-room perfected, and then I went off. I have never seen a member of the House on either of the bills. I have never spoken to a member of Congress, nor to anybody else except just members of the committee.

Q. You are a member of the Export Association too?—A. Yes, sir.

Q. Have you read Mr. Miller's testimony on that point?—A. No, sir; I heard it.

Q. Does he state the facts as you understand them?—A. Perfectly.

The CHAIRMAN. I have no doubt he states it correctly.

The WITNESS. Yes; and our house paid a very large portion of that assessment, and we not being exporters did not have anything to do with getting it back.

Q. You know nothing more than he was able to give us as to the disposition of the late assessments?—A. No, sir.

Q. He brought it down to a certain point, and had not the later returns?—A. No, sir; every statement he made, I think, was perfectly true.

By Mr. COCKRELL:

Q. That first bill embraced the extension of the bonded period, and

also the reduction of the tax, did it not?—A. Yes, sir; it embraced a still more important thing than that, we think.

Q. What was that?—A. That was the vinegar clause. I have been down here three or four years on that matter, and never been able to get it through.

Q. What was the point desired in that?—A. The point desired in that was to get a return of the law as it was in 1868, I think, by which a vinegar factory nor anybody else could manufacture except from spirits distilled by an authorized distillery. Now the law is such that a vinegar factory can make spirits just as well as we can, and they just get up an apparatus right alongside of us. We have to pay 90 cents tax, all the supervision, keys and seals, and everything that a revenue man can invent; and they run upon that and have nothing to pay—not the slightest thing.

Q. How do you say they make spirits?—A. They make spirits by distillation.

Q. The same as you do?—A. The same as we do, except the still is not precisely of the same sort. I came down here two years ago, and brought letters to the Committee on Ways and Means from all the different collectors of the country. I had one from Mr. Harvey, collector at Chicago, also, and Mr. Harvey told me he had again found spirits in a vinegar factory in Chicago that measured 73 to 94 per cent. That was one point that we were after in that bill.

Q. Why do they manufacture it; for the purpose of making vinegar?—A. Yes, sir; for the purpose of making vinegar; but we were afraid they would use it for something else.

Q. Well, I mean ostensibly they manufactured it for making vinegar?—A. Yes, sir.

Q. Is there any large quantity of that manufactured?—A. Yes; a very large quantity.

Q. Where is it manufactured mostly?—A. All over the country, wherever they can buy corn.

Q. Is it manufactured out of corn?—A. Yes; out of corn, just precisely as we make our whisky.

Q. Just what process do they put it through to make vinegar?—A. They merely run it through generators, heated with shavings or something; that is known as alcohol vinegar; it is known as the best vinegar made; and what we were trying to make them do was to buy the alcohol from us, upon which we pay the tax, and let them make vinegar out of that, and thereby take off some of this surplus that we were trying to get out of the country.

Q. I do not understand how they make vinegar out of it.

Mr. HAWLEY. Please give the committee a brief statement of that vinegar process.

Mr. COCKRELL. Before this law now, how did they make vinegar?

A. They would come to us and buy their high wines, buy fifty barrels or less, and they would take them out and reduce them with water until they got, for instance, ten to thirteen per cent. in the water; they mix that together, and then they put it in large tanks that are heated; they heat themselves by fermentation of shavings, and they pass that spirit through from ten to thirteen degrees, and that produces what is known as thirty or forty grain vinegar, which are the usual vinegars of commerce. But Mr. Atherton is more familiar than I am with that process.

Mr. JOHN M. ATHERTON. Yes; that is the old process. Now, when alcohol is concentrated up towards proof, then it is permanent and stable in its composition and character; but when it is diluted with water

down to the point that Mr. Schufeldt indicates, probably ten or twelve per cent. strength, then that alcohol is so diluted that it undergoes a chemical change and passes into acetic acid. That is one of the enemies of distillation, the tendency incurred to pass it into acetic acid. That is the great enemy of the distiller in the manufacture of whisky.

By Mr. COCKRELL:

Q. Then we understand that process. How much had they purchased of your distillations before this law took effect?—A. (By Mr. Schufeldt.) It was a large quantity.

Q. Since the passage of the subsequent bill, the present law, how do these vinegar manufacturers operate?—A. They operate just exactly as we do; they mash their grain and ferment it, and get their spirit out of it precisely as we do, and pay no tax.

Q. Is there any prohibition or restriction upon that? They can manufacture any quality of alcohol they desire; cannot they put it into vinegar?—A. No, sir; they cannot; but they are found with it all the time on their hands.

Q. Do you know whether there is any restriction upon the strength of alcohol they are permitted to manufacture?—A. I do not know that there is, sir; they say not. These goods that I was telling you about, seized three weeks ago at Chicago, were from seventy-three to ninety-four per cent., were released; no law could hold them.

Q. Then they dilute them with water?—A. Yes, sir.

Q. Then, really, there is nothing to prevent them from making just as good alcohol as you do?—A. Just as good; just as good spirits, not as good alcohol, because they cannot reach so high proof.

Q. Well, spirits, just the same?—A. Yes, sir.

Q. And then they dilute it, and make vinegar?

Mr. JOHN M. ATHERTON. Yes. One word in further explanation. You see the alcohol, the whisky of commerce, is brought to its standard strength of proof both by the system of evaporation and condensation, eliminating the water out of the alcohol by the mechanical fact that alcohol evaporates at a lower temperature than water. I think there is in the present law a provision that prohibits the manufacture of vinegars from condensed spirit above a certain proof, but there is nobody to watch, and they have got the machinery to do it, and nobody around, and if they see proper to make that spirit up to 100, or above, they could do so.

Mr. HAWLEY. That alcohol they make as well as yourself?

Mr. ATHERTON. Yes; I do not know that they do, but that is the method of doing it. It is only a question of whether they continue the condensation of the alcohol to a point that is fit for use.

Q. Then, what you desire concerning these vinegar factories is that they shall be forbidden to make alcohol by distillation?

Mr. ATHERTON. No, sir; not forbidden. What we want is that they shall be as liable to tax as men who make varnish, shellac, &c., are.

By Mr. COCKRELL:

Q. Have you any reason to believe that any of the distillations of the vinegar companies have been sold as spirits?—A. (By Mr. Schufeldt.) We know there have. I have had letters from collectors in different parts of the country where they had seized them; I think this is the third or fourth lot they have seized in Chicago.

Q. What did they do with them when they had seized them?—A. Well, they were released.

Q. Finally released?—A. Finally released, because there was no law to hold them.

Q. I want to ask about the money that you had expended, of which you spoke there in your address, in regard to prohibition measures. You spoke of getting orders from Kansas, and so on. Now, from whom do those orders come? Take for example Kansas or Ohio.

The WITNESS. For money?

Mr. COCKRELL. Yes.

A. Well, they come from customers.

Q. They come from men you deal with?—A. They demand it of us.

Q. And they say it is for the purpose of carrying on proceedings; has any of it been raised for the purpose of contesting the laws in the courts?—A. Yes, sir; there has been in Ohio an effort to defeat the Pond bill.

Q. Well, in Kansas I know there is a great deal of litigation.—A. The probability is that this money was spent in elections the same as it would be done now in Iowa; this election comes off, I think, on the 27th of June, upon the constitutionality of the manufacture and sale of spirits in the State of Iowa.

Q. Has any of the money been expended in the publication of articles on that question?—A. Yes, sir; trade articles.

Q. Has any money ever been expended, so far as you know, to affect the action of legislatures or of Congress?

The WITNESS. In Washington City?

Mr. COCKRELL. I mean State legislatures or Congress.

A. No, sir; I do not know of a dollar.

Q. I mean to affect the action of a legislature after it has assembled to enact laws?—A. I do not know what becomes of the money after it leaves our hands; when it gets out of the State it is four or five hundred miles away from us; but we have never spent a single dime in Washington.

Q. And never raised money for that purpose?—A. No, sir; not a dollar.

Q. And have employed no persons here?—A. None but officers of the association and executive committee. We have had them here from April.

Q. Were they paid salaries for coming here, or only expenses?—A. The secretary's salary will most probably absorb all the dues, and we have to go outside to get the balance. I had a committee of ten with me this spring. Mr. Atherton was one of them, but he swore the other day he did not collect his dues. Under the rules he is entitled to send in his bill, and it would have been audited and paid. All the rest of them have been paid.

Q. For his legitimate expenses?—A. Yes. Some of them were paid, and perhaps $1,000 of it is still due. I do not know what it did cost to come here.

Q. Now, these bills that were sent in, was there anything more than what would be the ordinary legitimate expenses?—A. No, sir; not a thing. I do not know whether they charge us with living at Welcker's or at the hotel. We live at the hotel and dine at Welcker's. It is expensive business. There is another matter regarding this bill.

Mr. COCKRELL. Go on and explain it.

A. We have been exporters of alcohol very largely in the Northwest, as Mr. Miller said here, up to a great many million gallons heretofore, because the crops of Europe were short. Now, we can do that no more, because Germany has been a favored nation with France, and France

has allowed her alcohol to come in there at fifteen francs per hectoliter; but France has charged us when we sent alcohols in there thirty francs per hectoliter, thus discriminating against us while we had in this bill a clause that if the President of the United States found that France had accepted us as one of her most favored nations, that our Congress would reduce the import duty on imported spirits a half dollar a gallon. That, we thought, would appease France, and we had seen the French minister, and had had a delegation in the Chambers of Paris regarding it, and they said they thought France would accept; but that was also stricken out of our bill. We did not get anything. Those were two important points for the commerce of our country.

Q. So that you were not on equality in exporting your distillations to Germany with France; you were not on an equality with France?—A. We were not on an equality with Germany. We could send the spirits into France, but we had to pay the difference. France charges us thirty francs a hectoliter and only charged Germany fifteen francs per hectoliter. So that our alcohol imported into France had to pay double the duty, and, consequently, Germany could beat us.

Q. France has been the place where you exported it to then?—A. Yes; but not a gallon of it has remained in France. They ship it in bond along down the Mediterranean.

By the CHAIRMAN:

Q. What would that tax be per gallon? You use a term I am not familiar with.—A. A hectoliter is about twenty-six gallons. France charged Germany fifteen francs and charged us thirty francs. I want to speak to you about another matter, Mr. Chairman. We have been detectives for the government in every instance. Whenever we could find anything we always reported it to the department. We have brought the officers and distillers to working in a very harmonious manner, and everything with that association has been done for the correction of crude laws and worse regulations. Last year I reported to the Internal Revenue Bureau that I had found that they were bringing alcohol into this country, as shellac varnishes, a great deal cheaper than our people could make them. I came to Washington myself at my own expense. I went to New York, inquired everywhere; could not find anybody in New York that could handle it, or in the Treasury Department at Washington. I finally got a detective out of the custom-house at Chicago, and we found they were buying American alcohols, exporting them into Canada, put a little gum shellac into them, and bring them back under our tariff itself as shellac varnishes at a very much less rate than our alcohol men could make them; but I succeeded after hard work in getting every one of them seized, and stopped it. Now, that is the class of work we are doing all the time, and do it well.

By Mr. COCKRELL:

Q. No effort to evade the action of the laws of Congress, but you have been assisting them all the way through?

Mr. WILLIAM H. THOMAS. I want to state, to have it as a part of the proceedings, that the first bill drawn by the committee here provided for a reduction of fifty cents a gallon upon brandies. The duty now on French brandies imported from France is two dollars a gallon, and the first bill provides that it should be reduced to one dollar and fifty cents. The object of that was, we were informed by the State Department and by the legation in France, that if this duty could be reduced to this country, then France would be more liberal in relation

to our exported alcohol. I wish that to be thoroughly understood by the committee that the first bill provided for that, and that bill was changed.

By Mr. COCKRELL:

Q. As I understand, that bill was changed; all those features stricken out, and it was made simply an extension of the bonded period?

Mr. THOMAS. That was all.

By Mr. HAWLEY:

Q. How much brandy do we import? I should think we should lose considerable by taking the tax off French brandy.

Mr. THOMAS. No, sir; our importations of brandy are very light indeed. They do not amount to much, and we export a great deal the other way.

Mr. JOHN M. ATHERTON. I will say to General Hawley that it is believed if the bond period is extended, so that we can age Kentucky whiskies at a moderate price, the old whiskies will entirely supersede the use of French brandy, and be exported, and that is one object we have in mind, to see if we cannot build up a trade in export goods.

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THURSDAY, *June* 8, 1882.

J. HAWTHORNE HILL sworn and examined.

By the CHAIRMAN:

Question. Mr. Hill, where is your residence?—Answer. Louisville, Ky.

Q. What is your business?—A. Journalist. I am the city editor of the Louisville Commercial, a daily morning newspaper.

Q. Did you have an interview with Mr. Atherton on the subject of his mission here in the passage of the funding bill relating to whisky in bond?—A. I had an interview with him on the general subject of the bill and its passage before the Senate.

Q. Did you publish that interview in the Louisville Commercial?—A. Yes, sir.

Q. Of April 28, 1882?—A. I think that is the date.

Q. What have you to say as to the correctness or otherwise of the report of Mr. Atherton's statements?—A. I believe it to be a correct statement as published, and have had no reason since to think otherwise.

Q. I will call your attention to one clause in it specially. You purport to ask the question, "Are there no other sources of opposition?" To which Mr. Atherton replies:

There is a very strong one that I have not mentioned, said Mr. Atherton. The "Carlisle bill" it was intended to put through Congress upon its merits. A delegation of distillers and dealers went to Washington early in the session to consider what legislation was needed for the protection of their interests, and, after several conferences, agreed upon the present bill. A number of lobbyists approached that delegation, of which I happened to be a member, and suggested that their services might be of material benefit to us, but all their offers of assistance were refused. Some of the lobbyists at once began to boast publicly that they could and would kill the bill. It is to this source that I think can be traced the sensation of the New York Herald. It was also hinted that unless certain influential newspaper correspondents at the capita- were well feed—say, at $1,000 apiece—they would greatly damage our cause. Mr. Shulfeldt, president of the National Distillers' Association, who is now in Washington, has frequently written to me that there was danger from a coalition of these unemployed lobbyists and unfeed correspondents, and I have been watching all along for just such publications as the one that has just appeared charging that a gigantic swindle is at the bottom of all this legislation asked for.

Have you any desire, upon thinking of it, to change the report of Mr. Atherton's statements which you made in the paper? If so, what?

A. I have no desire, sir, to make any change.

Q. Did he state to you the names of any of the men to whom he thought this opposition was attributable?—A. He did not.

Q. Did he indicate the name of any newspaper that he thought was influenced in that way except the Herald?—A. No, sir. The Herald was mentioned in this connection because we had republished from the Herald two or three long articles which had been referred to in the early part of the interview.

Q. Are you quite certain that he said some of the lobbyists boasted that they would kill the bill if they were not feed?—A. I understood Mr. Atherton to say that he had heard that they had boasted they would kill the bill or help defeat it.

Q. But he did not mention any names?—A. No names.

Q. Did he mention any names of correspondents who would probably damage the cause if not feed?—A. No names.

Q. You stated it then as nearly as you could in his own language here? It appears to be quoted.—A. I tried to use phrases which were his. The conversation was much longer than could be printed entirely in one newspaper article.

Q. Would the conversation upon these points, in your judgment, if published in full, give any other impression than the one you gave in this interview?—A. It would have no other impression upon myself.

Q. Could you, from that conversation, in any way put us upon the inquiry that would lead to the names of the persons or other newspapers than the Herald? Was there anything in that conversation from which you could ascertain who he meant further than is expressed here?—A. I could not.

Mr. HAWLEY. You know what we are inquiring about here just as well as the committee does. If you have any information to help us to discover any wrong-doing which involves fraud in connection with this bill, I would be glad to have you state it.

The WITNESS. You mean wrong-doing?

Mr. HAWLEY. In connection with the legislation, I mean to say anything that affects the purity of legislation in any respect.

A. Outside of the interview I had with Mr. Atherton, I know of no facts in connection with the matter whatever. I attempted to give in this interview the substance of our entire conversation. I have given no thought and no attention to the subject further than this.

The CHAIRMAN. If Mr. Atherton desires to ask you any questions, as it is a different case from the ordinary one, we shall give him the privilege.

Mr. JOHN M. ATHERTON. What I desire to say to the committee is that, as some question of veracity, probably, and certainly of accuracy of memory, has been raised between Mr. Hill and myself, I should like to ask Mr. Hill a few questions.

The CHAIRMAN. All we want to get at is the exact facts.

Mr. ATHERTON. The question I desire to ask Mr. Hill, with reference to the interview, is something as follows: Where did the conversation with me occur that you reported as an interview; at what time of day, and on what day of the month?

Mr. HILL. It was at the residence of Mr. Atherton, I think, on the 27th of April, in the evening, probably between 9 and 10 o'clock.

Mr. ATHERTON. Did I seek you, or did you seek me?

Mr. HILL. I called upon you without solicitation.

Mr. ATHERTON. Did you or not state to me, in explanation of your call at my residence so late at night, that you had called on several whisky men, and had found them out of town, or not in their offices?

Mr. HILL. I did.

Mr. ATHERTON. Who directed you to call on the whisky men?

Mr. HILL. No one.

Mr. ATHERTON. Had you ever heard them say anything about a set of lobbyists working to defeat the pending bill in the Senate?

Mr. HILL. I had not, because I met none of them before I met you?

Mr. ATHERTON. Had you any reason to believe that I, or any other distiller, was afraid correspondents would oppose the bill?

Mr. HILL. The first I heard on the subject was what came up in that conversation.

Mr. ATHERTON. Had you heard from any source, or any conversation, of opposition or effort to defeat the bill?

Mr. HILL. I had not.

Mr. ATHERTON. Had you heard that any correspondent had offered to defeat the bill?

Mr. HILL. I had no such information.

Mr. ATHERTON. Had you information of any such charge against any correspondent? If so, where, and when did you hear it?

Mr. HILL. I had heard no such charges.

Mr. ATHERTON. Had you any instructions to investigate such charges?

Mr. HILL. I had no such instructions.

Mr. ATHERTON. I want to ask if that letter which I handed to the committee is an original letter?

Mr. HILL (examining his letter as printed in the evidence). The letter is genuine.

Mr. ATHERTON. Does not that letter state that certain errors about correspondents were made in your report of the conversation with me? Does not that letter state that there are certain errors about your report of the conversation about correspondents, with me?

Mr. HILL. This letter was written after a conversation with you on the subject, in which conversation I stated that the language used by yourself had not been followed strictly. This letter was written to you after the conversation held with you on the subject, and the errors which are referred to here mean errors in verbiage; in other words, I did not report you verbatim. But it was not my intention in writing this letter, nor did I mean to admit that any errors had been made in the ideas—the impressions.

Mr. ATHERTON. But you did state in the letter that the fact that you had reported the conversation from memory hastily, and had not seen the proof yourself, and had not shown it to me, might account for certain errors about correspondents in your report of the interview? Is not that the substance of your letter?

Mr. HILL. This may explain satisfactorily some errors made in reporting you, which means the verbiage used.

Mr. ATHERTON. We do not care what it means. That is the statement in the letter, is it not?

Mr. HILL. That is the statement.

Mr. ATHERTON. Did you see my card of May 4 in the Courier-Journal, correcting the report of the interview?

Mr. HILL. I have a copy of the card.

The CHAIRMAN. Please read it, as we have not got it in the evidence anywhere else.

The witness read as follows:

*To the Editor of the Courier-Journal:*

LOUISVILLE, KY., *May* 4.

The Commercial, of this city, on the 28th of April, published an interview between myself and one of its reporters concerning the bill for extending the bonded period for distilled spirits now pending in the Senate. The conversation which appeared in the shape of this interview was casual, and was not taken down in writing at the time nor submitted to me before publication. In fact, I supposed at the time that I was giving information to the reporter for an article which he expected to prepare on the subject, as I had done several times previously to the reporters, and did not know until I saw the Commercial next morning that the conversation had been reported as an interview. I glanced hastily at the article, laid the paper aside, and having been very busy much of the time since in the country, did not read the entire interview until this morning, hence the delay in this statement.

In reply to questions of the reporter, "What is the source of opposition to the bill?" I made but one *statement of fact*, to-wit: Offers of aid in presenting and passing the bill were made to me while in Washington last winter, by persons known in common parlance as "lobbyists," and that these offers were not accepted. I stated to the reporter that I had heard since I left Washington in February that threats to defeat the bill were made by the lobby, but in no instance, where lobby aid was offered, was there, to my knowlcdge, any suggestions of any improper or illegitimate means to be employed; nor was the name of any Senator or member of Congress mentioned to me by any lobbyist, or any claim made that the lobby, or any member of it, could control or influence any member of House or Senate, or any official. I was not approached then, and have not been approached since, by any correspondent of the press for any improper purpose. All statements to the contrary, both in the Commercial of April 28 and in the Courier-Journal to-day, are mistakes of the reporters.

In view of the foregoing statements of what I said on the above occasions, it is manifestly unjust to the gentlemen who desired employment to aid in passing the bill to give names and thereby subject them to the suspicions of misconduct which seem to be floating around Washington.

This is all that concerns the public, and whatever else I said or may have said to either reporter was nothing more nor less than individual opinions which I honestly entertained and had a perfect right to express.

The WITNESS. The remainder of this relates to the article in the New York Herald. Shall I read it all?

The CHAIRMAN. It is as Mr. Atherton wishes about that.

Mr. ATHERTON. The remainder of it is just simply explanatory of my connection with the bill. The part referring directly to the interview is what Mr. Hill has already read. I want to ask Mr. Hill when he first saw that card.

Mr. HILL. I saw it in Bowling Green about two or three days after its publication.

Mr. ATHERTON. When you saw the card did you make an effort to make any correction of that card?

Mr. HILL. I made none, because I did not consider it as a contradiction in any sense of my own interview.

Mr. ATHERTON. You did not consider it as a contradiction of your interview? Do you consider the card now as in contradiction of your interview?

Mr. HILL. I will have to read it more carefully than I have read it, as I paid no attention to it specially when it was first written.

The CHAIRMAN. Have you any further questions to ask, Mr. Atherton?

Mr. ATHERTON. I shall be through in a moment.

The CHAIRMAN. I am not hurrying you, but I thought you were through.

Mr. HILL (having carefully read the card of Mr. Atherton). Mr. Atherton, you asked me whether I regarded this card as a contradiction in part of my interview.

Mr. ATHERTON. Yes.

Mr. HILL. I would prefer you to specify some part of the card.

Mr. ATHERTON. You have read the entire card and I want your opinion as to whether there is any contradiction between my card and the interview, according to your best recollection of the interview?

Mr. HILL. My impression when I read the card was that it had but slight bearing—this first part of it—that which relates to the article in the Commercial, and which relates to the article in the Courier-Journal, which I had never seen, had but slight connection with our interview. I fail to see any contradiction of any fact I stated.

Mr. ATHERTON. At the Jockey Club, during the races, did you not introduce the subject of the publication of the card, which you said had been published during your absence from the city?

Mr. HILL. I mentioned to you on the stand that I had seen that card in the paper.

Mr. ATHERTON. Who was present when you mentioned the subject, do you remember; sitting by my side?

Mr. HILL. I cannot remember recognizing any one.

Mr. ATHERTON. What did you say in that conversation with me at the Jockey Club about the card?

Mr. HILL. I do not remember well enough to make any statement of the conversation I had with you then.

Mr. ATHERTON. Well, did you or not say to me that you had seen the card in which I had corrected the interview about the correspondents, and added that probably in the article you had also reported me incorrectly in stating that certain gentlemen had offered to assist in passing the bill?

Mr. HILL. Repeat the question, please.

Mr. ATHERTON. Did you not say to me at the Jockey Club ground, introducing the subject yourself, that you had seen my card during your absence, and saw where I had corrected certain parts of the interview with reference to correspondents, and in that article you had also failed to report me correctly in saying that I had been approached in Washington by certain gentlemen, known as lobbyists, to aid in passing the bill?

Mr. HILL. My recollection of that conversation is, I told you that in the interview in the Commercial, I had reported you as saying in the interview that "a certain number of lobbyists approached a delegation of which I happened to be a member," but I left you on the night of the interview without being certain that the lobbyists approached you in person. You told me at the grand stand you had been seen by lobbyists.

Mr. ATHERTON. No; that is not correct. You said to me that in addition to the correction about correspondents you had probably incorrectly reported me as saying that gentlemen in Washington had applied to me, and I replied that no correspondents had approached me, but that the lobby had—that I did make that statement to you.

Mr. HILL. I fail to remember the substance of the conversation.

Mr. ATHERTON. You do not remember what you said about it, then?

Mr. HILL. I do not remember anything further than mentioning the subject of whether you had been, or whether you were, merely a member of the committee which had been approached by the lobbyists.

Mr. ATHERTON. Then you are in doubt as to being correct about that part of the interview which you reported?

Mr. HILL. I am certain it was mentioned in the interview about the committee or delegation having been approached. It was not touched upon that night as to whether you were present yourself. Consequently in writing the interview I did not say whether you were present or not.

I merely said "a number of lobbyists approached that delegation, of which I happened to be a member."

Mr. ATHERTON. You do not remember that I said to you during the conversation that I myself was approached by the lobbyists.

Mr. HILL. Not in the original conversation.

Mr. ATHERTON. Well, did you write that article or do you know who wrote the article in the Louisville Commercial of June 2? Did you write that article?

Mr. HILL. No, sir.

The CHAIRMAN. Please read it if it is short.

The witness read the following editorial from the Louisville Commercial of June 2, 1882:

One of the striking peculiarities of human nature, as exhibited by public men, is that not one of them ever made a mistake in a newspaper interview that he did not emphatically charge to the reporter as soon as he learns it is a mistake. Mr. J. M. Atherton testified before the Windom committee yesterday, that a reporter of the Commercial had made a serious error in making him say in an interview that he had heard of demands made by lobbyists and newspaper correspondents at Washington upon the whisky men for money to buy their assent to the passage of the whisky bill. As a simple matter of fact, the Commercial stated several days before that interview appeared, that the charges against Washington correspondents was on its face absurd. A reporter called on Mr. Atherton especially to obtain information on that point and side opinions on the whisky bill, to make an interesting article. If Mr. Atherton had said that he knew of no demands by lobbyists and correspondents it would have been a corroboration of the Commercial's opinion that we would have found valuable. There is no probability that the reporter made an error. He went to find white or black, and he could not have confused the two. Besides, Mr. Atherton did not correct that interview or charge any errors until after the New York Herald had made it quite hot and interesting for those who assailed the integrity of its representatives. If the interview reported Mr. Atherton's answer incorrectly upon the charge that was agitating the whole country, it is singular that he did not correct it at once and indignantly. Such detail as the reported interview contained could not have been injected into it from a reporter's imagination. The newspapers are not always and solely in error. But it is quite easy to charge it, and it always sounds well.

In the mean time Mr. Atherton is right on the main question. Mr. Windom's whisky ring is a ring of the mind altogether. It don't exist, in fact.

Mr. ATHERTON. Did you write that article?

Mr. HILL. I did not.

Mr. ATHERTON. Do you know who wrote it?

Mr. HILL. I think I do.

Mr. ATHERTON. Did you furnish any information upon which that article was written?

Mr. HILL. I did not. The article was written without my knowledge and without consultation with me.

Mr. ATHERTON. Well, Mr. Chairman, all I want to say is, that this very article, published in the very same paper, reports me as testifying before your honorable committee that no one had approached me, either lobbyists or correspondents, and that statement is made in the same paper, with the testimony reported on another page, in which I did state to the committee that a gentleman had approached me; and I incurred the displeasure of your committee, very much to my regret, in being in a position where I felt I could not as a gentleman give the names for reasons which I explained to your committee at length.

Furthermore, this article states, as you will see, that this correspondent was sent expressly to get information about charges that were made about correspondents, and the witness himself testified before the committee that he had not heard of any charges and was not sent to get any information by anybody. And furthermore, I believe he will be unable to produce in the files of his paper or any other paper, up to the incorrect report he had made of that interview that any charges had

been made against anybody. I now say for the first time to Mr. Hill that in correcting the interview by the card in the Courier-Journal and before this committee, I had no intention of conveying the impression or trying to convey the impression, that he had purposely or intentionally misreported the interview, and to state that as it was an extended conversation, and writing from memory as he did several hours afterwards, and not submitting the proof to me, it was very natural that he should have made mistakes upon that point.

The CHAIRMAN. Well, we will make the inference from that, Mr. Atherton.

Mr. ATHERTON. Just one other statement I desire to make in justice to other gentlemen who may be sworn, that it was not my intention to connect the name of any correspondent whatever with any publication in any of the newspapers, but I was simply surmising in my own mind as to how such information as contained in the papers could have made its way to the public press; and in that surmise it occurred to me that possibly somebody in Washington had become offended because we had not given them employment, and they had imposed upon the papers false information, and with that statement I propose to leave the subject. I leave the Commercial to reconcile its editorial statements with the sworn testimony of its own reporter.

The CHAIRMAN. Mr. Hill, do you want to ask Mr. Atherton any questions? If you would like to ask him any questions, you are at perfect liberty to do so.

Mr. ATHERTON. I am perfectly willing to answer any questions on any point by Mr. Hill or any one else.

Mr. HILL. At the conversation at your residence, Mr. Atherton, on the evening of April 27, you remember, I called your attention to the articles contained in the New York Herald on this pending whisky bill?

Mr. ATHERTON. Yes, I remember; no, I do not remember that you called my attention to any articles in the Herald. I remember to have stated to you that the article in the Herald might be attributed to false information or to the work of men who had not been employed by us and who had become offended because they were not employed. I do not remember that you said a word about the Herald until I introduced the subject.

Mr. HILL. Do you remember, or do you not, when I first called, that I explained the object of my call by saying that these articles had appeared in the New York Herald, and I wanted a statement from the Louisville distillers on the other side?

Mr. ATHERTON. No; I do not think you made any such statement. You simply stated to me, as an apology for interrupting me so late at night at my residence, that you had been trying to find whisky men, and you found them out of town, or not in their offices, and that was your excuse for asking information about the bill.

Mr. HILL. And you do not remember you said you had no knowledge or information on the subject discussed in the New York Herald?

Mr. ATHERTON. I am very positive—my recollection is—that you did not make any such statement.

Mr. HILL. Did you or did you not mention the sum of one thousand dollars as a fee which would be a very comfortable sum for a correspondent?

Mr. ATHERTON. I do not remember mentioning any sum. However, I may have done so in stating, as I stated before the committee, that as a business matter it would have been a good investment to quiet men who were mean enough to give such false information or to pub-

lish such articles as that in the Herald. It would have been cheap to have silenced them by—probably, I may have said $1,000 or $5,000. On that point I do not remember, but if I mentioned any sum it was in connection with that statement, that it would have been a good investment to have done so—probably at that price or a higher one.

Mr. HILL. Do you or do you not remember mentioning, not giving names, but mentioning the fact that there were certain newspaper correspondents at the Capitol who were influential enough to endanger the passage of the bill if they were so disposed.

Mr. ATHERTON. I did not say one word about correspondents. State your question over again; I did not exactly understand it.

Mr. HILL. Did you or did you not mention that there were in Washington, at the Capital, certain influential newspaper men—not giving names—men who had influence enough to endanger the passage of this bill if they were so disposed?

Mr. ATHERTON. I do not remember. I may have said that there were correspondents who had influence enough to have injured the bill if they were imposed upon by these correspondents or by these lobbyists who had wanted employment, but did not get it. I do not remember what I may have said on that point. What I do distinctly remember, and say now, is that I never said to you or any one else in the world that influential correspondents or any kind of correspondents applied to us for employment, or intimated they wanted money to be retained to either aid or defeat the bill.

Mr. HILL. Mr. Chairman, I have no more questions to ask.

A. C. BUELL sworn and examined.

By the CHAIRMAN:

Question. What is your residence?—Answer. Washington.

Q. What is your occupation?—A. Journalist; writing for the newspapers.

Q. Are you the owner or editor of the Critic?—A. Well, nominally, I might say.

Q. Nominally the editor, do you mean?—A. Yes, sir. I would not say that I was editor of the paper unless I exercised sufficient supervision over it to know every day what went into it, and was willing to be responsible for everything that is printed in it. I do not do that with the Critic. I write most of the editorials, and in a general way supervise it, but there is a great deal of matter goes into the paper, owing to my neglect, that probably I would not put in myself. I do not devote all my attention to it; and, for that reason, I say nominally the editor of it. I suppose that, upon a question of responsibility, very little goes into it that I would at a pinch disclaim, though a great deal of it I do not sanction, because I do not see it before it is printed.

Q. Will you be good enough to state any information you may have with reference to the use of improper means for the raising of money to influence the passage of the bill now pending, with reference to bonded whisky?—A. Well, my information on that subject is, I may say, entirely general and of a cumulative sort; the result of an infinite number of conversations with men and newspaper articles that I have read here and there, and the whole mass of matter analyzed in the light of the character of the measure itself. I suppose I was inclined from the start, from the beginning of the controversy over the matter, to be prejudiced against it. I regarded it as a job from the start, and perhaps from that cause was inclined to—well, not to give it the benefit of any

doubt that might otherwise have existed in its favor. I do not know that I have any specific information beyond that which is accessible to everybody, such as is contained in Mr. Shufeldt's letter, which I quoted several times, which was the admission of the raising of a large sum of money in connection with the matter, and in view of the legislation that was expected. Then the interview that has been the subject of the examination of the last witness, and the general run and tenor of public discussion of the matter, I may say, is about the only source of information I have.

Q. Have you any information of any kind whatever as to certain newspaper gentlemen, who were mentioned in the Critic—for instance, Mr. Nordhoff, Mr. Carson, Mr. Boynton, or any others, having received any contingent or other fee or promise?—A. I do not know that Mr. Boynton's name was ever mentioned in the Critic; certainly not by me. If it was, I did not see the article in which it was mentioned.

The CHAIRMAN. Well, I do not see his name here (referring to newspaper-slip). I understood it was here, but I do not see it.

The WITNESS. I have mentioned Mr. Carson, and I think Mr. Nordhoff, but that was done more in a vein of chaff than anything else. It was in no case, as I remember, a direct assertion, because I had no ground to make a direct assertion on. I remember writing paragraphs something like this; for instance, I remember one about Mr. Carson. Mr. Carson owns some property up in my neighborhood, my part of the town, and I wrote a paragraph to the effect that the rumor that Mr. Carson's fee in the matter was contingent, was very distressing to me, because I had presumed that he would be able to improve his lot this summer, and build a house on it, and that we were always welcoming improvements in that direction, but the rumor that his fee was simply contingent, and the probability that the bill would be beaten seemed to dispel that hope. That was about the general tenor of these things; and, as to Mr. Nordhoff, I was rather inclined to make fun of the implied assertion regarding him—or not implied assertion, but the insinuation regarding Mr. Nordhoff which appeared in Mr. Atherton's alleged interview with the reporter of the Louisville Commercial. But if any one should read those paragraphs carefully, he would discover, I presume, what I intended by writing them, and that was to make light of the whole matter; to make fun, in other words, of what I understood was the assertion of the ring that they had been approached by newpaper men. I may have a bungling way of making fun—I presume I have—but that is the best I could do.

The CHAIRMAN. For instance, you say:

> The story in circulation on Newspaper Row that Nordhoff's fee from the whisky ring was $5,000 contingent on the success of the bill, is probably untrue. Nordhoff does not do business that way. His fee is much more likely to have been $3,000 cash than $5,000 contingent. Nordhoff never takes a contingency except on a sure thing.

The WITNESS. Assuming he was ever bought at all, I presume he was more likely to be doing business on a cash basis. Being a prudent man and belonging to a race not much inclined to take long chances, I presume that to be the case.

Q. What I was going to ask was about the rumors.—A. Well, these rumors go about from mouth to mouth in the hotel lobbies and in the street, and create a good deal of excitement. At the time the report came out—Mr. Atherton's statement that he had been approached by newspaper men—there was a great deal of curiosity as to who the men were, and a great deal of speculation grew out of that, and this rumor that I refer to was probably one among a great many conversations I

heard on the subject. I do not know that I could locate them. You would hear half a dozen men talking about it, and indulging in guesses and speculations.

Q. Were those guesses in earnest, or were they passing jokes around from one to another; how was that?—A. I do not know. I never had any means of knowing. I treated it all as a farce; and, so far as the allegations of corruption on the part of newspaper men were concerned, or their corrupt proposals to the ring, I endeavored to treat is as a farce from beginning to end.

Q. All that we want to get at is whether you can give us any information that will tend to prove or disprove that any lobbyists or any newspaper men had any connection whatever with this business.—A. No, sir; I have no information to that effect whatever. My whole conduct, and that of my newspaper, so far as that is concerned, was intended to fetch the theory into ridicule. I have had suspicions in other directions, though no positive information. I do not think there was any excessive pressure of virtue to the square inch in the methods employed to get that bill through the House. For example, I have never before seen or heard of a measure involving sixty-odd million dollars as between the government and individuals put through the House of Representatives without debate under a suspension of the rules, and that fact itself excited nearly all the suspicion I have had, or the original suspicions I had about the matter. I knew, in a general way, that a great deal of money had been raised. Mr. Atherton, I think, or some witness before this committee, has explained that it was raised for a philanthropic purpose, to enable weak distillers to carry the large stock that they were producing, or something of that sort, and I did not know whether that was true or not. But I assumed from the mysterious method by which the bill got through the House; the unexampled celerity of its movements there after it left the committee; the fact that nobody was allowed to debate it, or make inquiry as to its provisions, that it came from the committee as an accomplished fact, and was put through the House as such—I thought that was an indication that the beneficiaries of it did not court public investigation or discussion; and all those things together raised suspicion in my mind. I do not know that I ought to cherish suspicion with regard to the members of the Ways and Means Committee.

Q. My questions were only put for the purpose of getting any information you might be able to give.—A. I was getting at that in rather a roundabout way. I was endeavoring to explain to the committee, more fully perhaps than the committee wants to hear, the reason that led to my attack, as it has been called, upon the bill and upon those who were pushing it.

The CHAIRMAN. No; we prefer to have your statement just as you are making it.

The WITNESS. This statement of Mr. Shufeldt that an immense sum of money—some $600,000—had been raised (six hundred and odd thousand, I think), and his further statement that even with that they had found themselves short, without any subsequent explanation of what it was raised for and what was done with it, was enough to excite suspicion in anybody's mind. And take that fact, coupled with the mystery of the passage of the bill, the way it was put through, and the spirit that was displayed by those having it in charge towards the few gentlemen in the House who endeavored to stop it, or check it long enough for examination or explanation—all those things together, I submit, were almost necessarily provocations of suspicion, and that is

what I based my suspicion on. Then I inferred from the subsequent proceedings, from the charge made by Mr. Atherton, after the bill got over here to the Senate and appeared to be encountering opposition, that they were endeavoring to forestall or checkmate the effect of newspaper criticism by smirching newspaper men. That provoked me a little, and I concluded to do what I could to secure ventilation of the matter. That was the impulse that led to all the publications I have made on the subject. I should be very sorry, though, to have anybody believe that my paragraphs, so far as the newspaper men themselves were concerned, were dictated by any malice toward them, because my object was to bring the charge as against them into ridicule. As I said before, I may have gone about it in a bungling way, but I did the best I could. I have no specific information on the subject that I could locate. I have had a great many conversations with a great many different men on the subject, some of whom are gentlemen well known in this community, and I may say professionally—I won't say lobbyists, I will say observers of legislation.

The CHAIRMAN. A modest way of putting it.

The WITNESS. And a great deal of important information has come from them; but it has all been fragmentary. I do not know that I could locate any one man's statement, or the source of statements. If I undertook to give testimony, and if I gave names of individuals whom I talked with from whom I have derived information and impression, I might get them entirely wrong; I might get one man's words in another man's mouth. I should say I have talked with twenty men about it who are neither members of Congress nor newspaper men; but men who generally watch those things keenly, and sometimes I suppose are interested in them.

Mr. HAWLEY. I have prepared a general question, Mr. Buell, which I would like to have you answer. Have you any information tending to show that any gentleman connected with the press, in any capacity, has received or been promised, or has reason to hope that he will receive any valuable consideration whatever for his action concerning the whisky tax? Have you any information tending to show that?—A. No, sir. On the contrary, I would not believe it if I had, because the condition of the most of them, so far as I have followed them, has been rather tending to show that they had not anything. There are a few men on Newspaper Row—journalists here—who have ignored the matter, or did ignore it up to a certain point; but I did that myself. I never really knew anything about it until this charge was made against Senator Voorhees. That was really the first time my attention was called to it, and I do not think you will find anything in my newspaper, or either of them, published about the matter, or any mention made of it, prior to that date. The fact of the matter is that the curtains of the Ways and Means Committee were kept drawn so close nobody had any suspicion of what was going on in there. I did not, and I think it would have taken a pretty watchful newspaper man to have found out.

Q. I will just insert in that question "any member of Congress," and put it in this shape: Have you any information tending to show that any gentleman connected with the press, or any member of Congress, has received, or been promised, or has reason to hope that he will receive any valuable consideration whatever for his action concerning the whisky tax? Have you any information tending to show that?—A. Well, I do not know whether I would call it information or not. I do not think that I have asserted at any time as a matter of knowledge

that any member of Congress had received any money or any valuable consideration.

Q. Or expected to receive any?—A. Or expected to receive any. I do not know that I have put that in that form. I have probably, not to put it strongly, intimated a suspicion to that effect. And I do not know that I would to-day—at least until I have an opportunity to consult with some other gentlemen—whether I would be willing to indicate the source of that suspicion. I do not hesitate to say, though, that the impression was produced on my mind that some members of Congress, and perhaps one Senator (I would qualify by "perhaps")—that perhaps one Senator had an interest or had reason to be interested in the passage of that measure beyond any natural prompting that he might have from his connection with public affairs and the public interest.

Q. Now, if you had that belief in your mind it must have been based upon something in the nature of information, must it not? Some sort of fact gave you the belief?—A. Well, from the fact that all the impression that I have on that subject is based upon conversations with members of Congress themselves, and that those conversations were of a decidedly personal and private character, I should be very loath to go any further on this line until I have an opportunity to consult them. If I had received any information of that sort from an outsider, that is to say, from a civilian, or a person holding no office, not reflecting upon a member of Congress either directly or indirectly, I should not hesitate to give his name; but, in view of the fact that all the impression I have on the subject is derived from conversations I have held with members of Congress, who are under certain obligations of courtesy to their fellow-members which do not bear upon a citizen, I would dislike to enter into any statement on that subject without consulting the gentlemen I have talked with to see whether they were willing to be quoted or not.

Q. Then you have some information tending to show that there has been an impression?—A. Well, I won't call it information; I will say I have had conversations with gentlemen which produced an impression upon my mind to that effect.

Q. The impression must have been produced by some assertion of others, some professed knowledge or fact, was it not?

The WITNESS. Do I understand you to mean some distinct, specific charge?

Mr. HAWLEY. There was something in what they said that made you believe it or incline to believe it?—A. Yes; undoubtedly that was the source of my suspicion, or of my impression, rather, which, after all, is nothing more than suspicion, because I have no positive knowledge on the subject.

Q. But these gentlemen must have had some knowledge to have given you the impression that there was corruption; must have intimated that they had knowledge?—A. Well, none of them, as I remember now, made any distinct statement of any specific act; that is to say, of the promise of any money or valuable consideration at any time by any member of the so-called ring to any member of the House. It was not in that shape. It was in a more general and indefinite shape than that, though it referred to individuals.

Q. Then do you mean to say that all they said was they thought that somebody was dishonest?—A. I rather think it was stronger than that; they had reason to believe, I expect.

Q. I think that we will have to know more definitely about that, Mr. Buell. It is very serious business, as every member of Congress knows,

and every press man knows. If anybody has given you, as you appear to intimate, serious reason to suspect corruption, I think we must know about it.—A. Well, it is not any recusancy on my part. I simply ask the privilege of consulting some gentlemen whom I would, if they requested it, be willing to protect; but I do not suppose they will request it. I do not know. I think it is due to them that I should say to them that I had made some publication of impressions derived from conversations both with them and with others, and I do not know that I would undertake to locate any single phrase or assertion in set terms upon any individual. The most I could do would be to give the general substance of conversations in any event, and I would very much prefer to consult with the gentlemen with whom I had those conversations before I undertook to give them. Even if I knew that they were perfectly willing that whatever they said in the matter should be repeated. I would rather consult them more fully, because I will not trust my memory to repeat, under oath, a month or two afterwards, conversations which I had with any man, especially in a matter as grave as this.

Q. I will ask another question. From whom came the rumor that Mr. Carson had received money?—A. I do not know.

Q. Did you hear that rumor?—A. As I said before, I heard that rumor in the form of chaff, as I heard a great deal. I heard newspaper men talking about it, laughing about it. That is the only foundation there was to that, and I suppose I heard two or three speak of it—three or four—I could not say.

Q. Do you mean to say now, Mr. Buell, that there is really among the newspaper men here anybody who will speak lightly of the intimation that these gentlemen received money, or insinuate that they did or charge that they did?—A. I am afraid, general, that the disposition among the newspaper men here has the tendency to be humorous at the expense of their fellow-men; that they will joke about a thing of that kind; some of them.

Q. And bandy around suspicions? You would not expect them to joke about you in that way?—A. I am afraid they do.

Q. What do you say when a man jokes about you, about receiving money in that way? Do you knock him down and tell him he is a liar?—A. No. sir.

Q. Well, you ought to if you are an honest man.—A. You get used to a great many things in journalism, particularly at the Capital. I am afraid you could not judge the journalism here by the standard you have established at Hartford, a staid old town like that, where nothing new ever creeps in. You cannot judge newspaper men here by that New England standard. We are probably as honest here as anybody else; at least our poverty ought to be sufficient testimony on that point.

Q. Just what I believe. I think the great mass of them are just like any other gentlemen. Now here is a clipping cut from the Critic. The article says:

> The Critic this morning bumped up against a prominent statesman at the Capitol, who is usually informed as to what is going on around him, and asked him promptly what the Windom whisky investigation would amount to.
>
> "That depends," sententiously replied the statesman. "There is a lot of choice meat in this matter if only the committee can get at it."
>
> "Do you think any of the correspondents are mixed up in it?"
>
> "I haven't said so," replied the statesman, with a significant smile. "But," he continued, "the committee might find out, say, from Mr. John M. Carson, clerk of the Ways and Means Committee, why it is that the whisky bill slid through that committee so expeditiously, got into the House without any particular report, and was sneaked through that body without a yea and nay vote being demanded or taken."

Now, the intimation is there that Mr. Carson had some improper connection with slipping the bill through. Do you know anything that justifies an intimation that he did, or is that mere street gossip?—A. I do not know anything about that article, except having seen it in print. We have a considerable corps of reporters employed about the Capitol, and that matter passes through the hands of another individual in the office. I do not really edit that matter.

Q. This is not your article, then?—A. No, sir.

Mr. HAWLEY. Well, I won't go any further with that.

The WITNESS. I should say that that was a fair sample of the gossip that has been prevailing ever since the raid was made on Senator Voorhees; which has been, so far as I know, the uppermost topic of gossip about the corridors and halls ever since that; at least I have heard more about it than anything else.

Q. I will read a little further in that paragraph, which continues—

Then, Mr. Nordhoff may be able to furnish a satisfactory explanation of his sudden and fiery zeal in this matter after the portentous silence of the Herald while the job was going through the House. Again, there is General Boynton, who represents a prominent paper in Cincinnati (the Gazette), a large whisky manufacturing center. General Boynton and his paper were ominously silent about this latest job of the whisky ring, and Boynton himself singularly indifferent to the bill.

You say you know nothing whatever about any foundation for that at all?—A. No, sir; that is not my production, and I do not know now whose it is. It is probably some one connected with the paper. But who the individual is I do not know.

Mr. HAWLEY. Well, I think in the interest of honest legislation as well as of an honest press, in both of which I am interested, when things of that kind are said there should be something to back them up or they should be squarely and absolutely retracted, Mr. Buell.

The WITNESS. Well, I have no doubt about the propriety of that proposition myself, and I would always be ready to retract a statement of that kind whenever it is shown to me it is untrue.

Q. But, then, that is not the ground you take. You sustain it, or somebody who is guilty of this; or, if he has got facts (I will leave out the word guilty in that case), whoever has got facts should be able to sustain it. It is a charge; it is in the nature of a public indictment, and a man should not state it without having something on which to base it. Now he ought to bring in that. If you have done a thing of that kind you ought to do it. If anybody in your paper has done it we would like to know the man, and whether he has made this out of his own head or whether he has got a shadow of fact to base it upon.—A. As I say now, at this time I could not say who is the author of that article; I do not know. It did not pass through my hands in manuscript or proof in any way, and I did not see it until it was printed.

Q. Here is another of these personal questions:

We hope the rumor that John Carson, Nelson, and the other correspondents, except Nordhoff, dealt with the whisky ring on a contingent basis is not true. The laborer is worthy of his hire, and where the proposed steal amounts to sixty millions the beneficiaries ought to be willing to risk a little cash. Twenty-five thousand dollars cash would have enlisted the "reformers,"—

which is quoted—

of Newspaper Row for life. We cannot credit the rumor that the boys "stood in" on a contingency.

Now, if you have any fact in the world, any reasonable supposition of a fact that justifies you in saying that twenty-five thousand dollars, or twenty-five hundred thousand dollars, would have enlisted the re-

formers, the editors, the correspondents of Newspaper Row for life, I think you ought to give it.—A. Well, that was a mere expression of opinion.

Q. Is that your opinion—that twenty-five thousand dollars would have enlisted the leading correspondents of Newspaper Row?—A. I do not say the "leading correspondents," I said the "reformers."

Q. You have in that article named Carson, Nordhoff, and Nelson.—A. I do not know that I would join the two statements together. I have no means of knowing, to state under oath, that either of those gentlemen could be retained for any sum whatever. I may have opinions which I would be willing to utter in a newspaper, and be personally responsible for, that I would not be willing to repeat under oath, because the responsibility of an oath is of a different character from that. I have that impression as to individuals. I think there is, perhaps, one man named there (though it is entirely irrelevant to the purposes of this investigation, and I won't name him here) whom I have reason to believe, as the phrase is, is "on it"; that is, that he sometimes gets valuable consideration for that sort of thing. But I do not know that he did in this case, and I have no particular reasons to suppose that he did.

Q. You have named three gentlemen of the press there, and in connection with that remark that "$25,000 cash would have enlisted the 'reformers' of Newspaper Row for life"; I want to know whether there is any fact in the world upon which you base an insinuation against these three men in connection with this whisky business?—A. I did not intend the insinuation to lie against those three men in particular. I have reason to believe that there are newspaper men, though, who are not proof against the blandishments of money, and I used that phrase to indicate that belief, though I do not know that as a matter of fact, under oath, I would be willing to state that, because I never bought any of them myself, general, and would not like to say that I thought a man was purchasable unless I had either bought him myself or seen somebody else do it. I presume in your career as an editor you have written a great many things with the reservation that you were not writing under oath, even in reference to individuals—persons.

Mr. HAWLEY. I do not wish to admit, Mr. Buell, that I would make a charge against a fellow-citizen in my newspaper, or in a conversation different from what I would make under oath. I do not think I would. I do not think I would; I could give suspicions, and reasons for inquiry and all that as well under oath as I could otherwise. I do not think you ought to say a thing in the press in that way that you would not say under oath. I do not think that that oath adds anything whatever to the obligation of a man to tell the truth.

The WITNESS. Perhaps the juxtaposition of these two sentences would imply an intention on my part that really did not exist; that is to say, it would imply the intention on my part to describe these three men named as the ones to whom I referred as "reformers." But that is not the case altogether.

Mr. HAWLEY. There are paragraphs of a similar character with regard to Senators. I do not care to follow them up unless the committee should so decide. I have not consulted the committee about that, and do not know. I will waive any further questions for the present.

The CHAIRMAN. Mr. Buell, we will not conclude your examination to-day. We would like to have you consider the propriety of answering the question as to giving those names.

Mr. CHARLES NORDHOFF. Mr. Chairman, as my name has been mentioned to a considerable extent, and as you seem to make a little

allowance, I should like to ask Mr. Buell one or two questions, with your permission.

The CHAIRMAN. Very well, you may do so. We did this morning practice upon the theory that you suggest. I do not know whether we shall get into trouble about it, but you may ask such questions as you desire to.

Mr. NORDHOFF. I only want to ask him one or two questions.

The CHAIRMAN. Well, you may proceed.

Mr. NORDHOFF. The only question I want to ask is whether he ever knew me to take any money of anybody in a corrupt way?

Mr. BUELL. No, sir.

Mr. NORDHOFF. Whether he believed, or ever has believed, that I would take money in a corrupt way?

Mr. BUELL. No; I never have known anything of the kind. I have no special reason to believe anything of the sort.

Mr. NORDHOFF. If you have no special reason, then you have no reason; therefore, I will let that pass now. I want to ask a final question, whether he thinks it is a just and proper matter to make insinuations against men whom he believes to be men of honor, against men who cannot possibly defend themselves, and whether he does not believe that it is a degrading thing to journalism to do that?

Mr. BUELL. If the insinuations were made maliciously, and with malicious purpose, I agree with Mr. Nordhoff in the theory implied in his question. There are a great many things which happen in the conduct of a daily newspaper, I presume in any man's experience in journalism, that will not stand the test of critical review or philosophical analysis. That is one of them. A newspaper published daily, and particularly an afternoon newspaper, does not give a man any chance for reflection at all. It is nothing more than the publication of what otherwise might be current conversation. So far as I am concerned in estimating the *gravamen* of any particular thing in a newspaper, I never attach any more importance to it than I would to the utterance of the individual who wrote it, made to me privately, except from the fact that it is printed and gets a wider circulation. I never took any stock in the impersonal theory of journalism, that a man acquired either superior character or superior credibility or any other element of superiority over his fellow-men from the accident of his having an ink-pot and printing-press at his disposal. For that reason I say that Mr. Nordhoff's question is unjust.

Mr. NORDHOFF. Well, I will let it go without any further answer, as the time is precious, Mr. Chairman. If you will allow me to ask one other question, I will be obliged.

The CHAIRMAN. Certainly.

Mr. NORDHOFF. I suppose Mr. Buell reads the newspapers?

Mr. BUELL. Some of them.

Mr. NORDHOFF. He must naturally have seen, as he was paying attention to this thing, that the Herald was the first paper to take up the question of the propriety of this whisky bill.

Mr. BUELL. Well, now, I do not recollect where I saw the first attack.

Mr. NORDHOFF. Then did you see also that in the Herald, and in my correspondence, appeared the first notice of what Mr. Atherton was reported to have said, and what he substantially admits to have said, and calling upon Mr. Atherton for the names?

Mr. BUELL. I think I saw that in the Washington correspondence

of the Herald, but I cannot remember now whether I saw it immediately upon its publication or some time afterwards.

Mr. NORDHOFF. You did not see it until it reached here, undoubtedly.

Mr. BUELL. I mean to say the day of its publication or afterwards.

Mr. NORDHOFF. No.

The CHAIRMAN. Mr. Buell, we will not conclude your examination today, because we would like to have you think about the question we asked and be prepared to answer at the next meeting.

CHARLES NORDHOFF sworn and examined.

By the CHAIRMAN:

Question. Please state your occupation and residence.—Answer. I am a journalist; special correspondent of the New York Herald here in Washington; one of the editors of the Herald.

Q. Please state any information you may have, if you have any, tending to inform the committee upon the subject of its investigation. I will ask that general question, and then I will put more specific ones; if you have any general information upon that subject, as to the raising of money or the use of money in connection with this pending whisky bill.—A. I have not any information upon that subject at all. I want to add, in justice to myself, that I never professed to have.

Q. No, I do not think you have. But as your name has been mentioned in some places in connection with it, if you ever heard of any use of money, or any proposed use of it, or any promise implied, direct or indirect, please state it.—A. No, sir; I have not.

Q. Have you had any interview or conversation with any gentlemen upon the subject of the bill and upon the subject of Mr. Atherton's statement as to the employment of lobbyists, &c., on this subject?—A. Not on the subject of the bill, of which I knew nothing until the Herald publication concerning it, which was not of my writing, I should say. But concerning Mr. Atherton's publication, I have had a good many conversations, because it interested me.

Q. With whom?—A. With Mr. Carlisle, who is a member of Congress from Kentucky, and with Mr. Wharton.

Q. Will you be kind enough to state the substance of those interviews?—A. I should like to have my dispatches before me to refresh my memory of events.

The CHAIRMAN. I have one here (handing a newspaper cutting to witness).

The WITNESS. The interview of Mr. Atherton was brought to my attention by one of the gentlemen in my office on my return from New York, and he told me that Mr. Atherton was chairman of the Democratic State Central Committee of Kentucky. I read it and said thereupon, "There is a man who charges corruption against influential newspaper correspondents. I am a correspondent. He seems to be a respectable man. It is the first time in my experience here in Washington that a reputable man has come out (a man who has got a little character to lose, or a good deal perhaps) publicly and said 'I was approached,' or 'I know of approaches by the lobby; I was approached, or I know of the approach of influential correspondents.' Now, then, if there is a lobby, and if there are corrupt correspondents, this is a good time to find it out." Thereupon I published Mr. Atherton's statement in a dispatch to the New York Herald, and said one of two things should be established: either Mr. Atherton must give the names of those correspondents

and of those lobbyists, or else he must acknowledge that he does not know, and that he therefore has made a statement that has no foundation. Those are my exact words. The next day I met Mr. Carlisle—not by chance, because I put myself in the way of meeting him—and I said to him, "I hear that Mr. Atherton is a prominent man in Kentucky, and a respectable person?" He said he was. I said, "If he has got any character, you ought to write to him and say that he should make those names public." He said, "I think so, too; I thought so at the time I first heard this." That is Mr. Carlisle's language. "That was my opinion," said Mr. Carlisle. "I urged several men who told me that such approaches had been made, to make known the names and circumstances at once. I was the stronger in that urging," said Mr. Carlisle, "because Mr. Voorhees's name was used. It was said to me by one of the gentlemen who had relations with this bill, that a person had come to them and said he could control Mr. Voorhees's vote. Now," said Mr. Carlisle—I am quoting him all the time—"I said to this gentleman, publish this at once. Now it is known who the scoundrels are who said these things; nobody believes Senator Voorhees could be thus used; any of our names might be thus used in this way. I myself might have some scoundrel behind me who would say, and make people believe, that he could control my vote, and it might be a blot on my good name. Therefore," said Mr. Carlisle, "I was extremely anxious." Mr. Carlisle told me he had never heard the names other than those; that the reason they refused to tell was because they feared it would injure their bill. Mr. Carlisle said to me that Mr. Willis, of Kentucky, if I remember right—and I think I do—was one who mentioned to him some names, and he urged that nothing should be said, because Mr. Voorhees might be angry and hurt, and it was not worth while. It was therefore better to conceal. In my opinion Mr. Carlisle was exactly right. I have always found him an honest, upright, and courageous man, and I was very much pleased. I said to him, "Then who knows these names if you do not?" He said, "Colonel Wharton; if you can see him he can tell you." He said, "Mr. Stagg knows." I think he told me Mr. Thompson, member of Congress, knew. He said, as I remember, "Colonel Wharton will tell you in a minute; he is square and honest." I said I should like to see Colonel Wharton, and I told him I would see him that afternoon. He said he would send him to me, and I said to one of the young men in the office, "Go down and find Colonel Wharton and ask him to come here." When he came I was naturally pleased. I said I shall now make a discovery. I had never seen Colonel Wharton before. I said, "Mr. Carlisle tells me that you know the names of certain people who approached your whisky people in this matter." He said "Yes." I said then, "You are a very fortunate man for me to see. I want to hunt this matter to the bottom. If there is any newspaper correspondent who ought to be kicked out, and if there is any lobbyist who has approached respectable people, now is the time to find it out." Colonel Wharton grinned and said, "I am counsel and cannot tell you these men's names. I know them only as counsel." Well, I was a little irritated, and I said to Colonel Wharton what perhaps he was a little irritated at me for saying, and perhaps I should regret it. I said that in the last dozen years I had never known a piece of rascality but what I found a lawyer standing before it to hide it. Then Colonel Wharton said to me if he could know the name of the man who wrote that article in the Herald, perhaps he could give the names of these people. Now I do not know the name of the man who wrote that article in the Herald. I told Mr. Wharton if he or his people would write to Mr. Connery, who is the

managing editor of the Herald, doubtless he would get it. I think that is substantially all there was.

Q. Did you have a conversation with Mr. Willis on the subject?—A. I did not; but Mr. Preston, one of the gentlemen in my office, had, and that conversation is quoted in here (referring to the newspaper slip), and I have no doubt is correct, because we are very correct about these things.

Q. Was the conversation with Mr. Thompson also by Mr. Preston?—A. That was also by Mr. Preston.

Q. Is there anything further you can give us; any information about this question?—A. Nothing more than that. I have been trying—I think my first dispatch was the 4th of May—I have been trying all this time to discover who it was that approached those whisky gentlemen

By Mr. HAWLEY:

Q. Do you mean as lawyers or as pressmen?—A. I mean as pressmen or lawyers, because there was never so good a chance since I have been in Washington—seven or eight years—to detect the lobby. A lobby is not easy to detect, because the fellows who deal with the lobby are generally themselves a set of scoundrels. Now, here is Mr. Atherton and Mr. Wharton; they are gentlemen; they are people of character. They cannot afford to sacrifice their character, and I said to myself, therefore, that these gentlemen are men of property, character, and standing, and if they were approached, and they say they were, their duty is to tell, and if they do not tell, they will leave it in a bad situation.

Q. You know what their testimony has been, I suppose?—A. I have read it only in the papers.

Mr. HAWLEY. I understand them to deny—if not, they will, of course, correct me—that any man connected with the press solicited employment; that they were lawyers, to their knowledge.

Mr. G. C. WHARTON. Yes, sir, lawyers, to my knowledge, or professed to be lawyers.

The WITNESS. I have nothing to say, except that I tried to do my duty as a member of the press; as a man who believes that the honesty of the press is as important to the country as the honesty of Congress, as you believe also, Mr. Hawley.

Mr. HAWLEY. I do.

Mr. JOHN M. ATHERTON. I should like to state, just for the information of Mr. Nordhoff, that I have never at any time in Washington or out of it had a conversation with Mr. Carlise, nor Mr. Willis, nor Mr. Thompson with reference to any offers of assistance of any kind in regard to this bill, and the first information I had about the use of Senator Voorhees's name was in the dispatches, and I was very much astonished to see my name connected with the use of Senator Voorhees's name in any way. I never heard the gentleman I spoke of use the name of any member of Congress, government official, or correspondent in any way connected with it, neither here nor anywhere else.

Mr. NORDHOFF. My advice to Mr. Atherton is that the next time he sees an interview of his published in a newspaper, as doubtless he did see it that evening, in which charges are made of corrupt approaches by newspaper men or people of that kind, he had better sit right down instantly, without the least delay, and say, "I did not say anything of the kind, and I know of nothing of the kind." Mr. Atherton did not do that, but waited until I published my dispatch in the Herald, and when that came to him he made, what seemed to me, a very lame denial, and I must confess that the young gentleman who sat here this morning did

himself credit as a newspaper man. I judge he left Mr. Atherton not where I should like to stand. I do not mean that offensively to Mr. Atherton.

Mr. JOHN M. ATHERTON. I do not care anything about your opinion at all. When I saw the imputation in the Herald I did not know that any such charge was contained in any interview, because I did not read it. We had a break in our warehouse, in which I lost several thousand dollars worth of whisky. I took up the paper, and it was the first knowledge that I had there was an interview when I took up the paper. It was nine o'clock, and I went to bank meeting, and the next day I went to the country. On coming back Sunday I did not go to the office, except in the morning, and most of the week I was out at New Haven, where the distilleries were located, and on my return I had a dispatch from Colonel Wharton that the Herald was excited by my reputed interview. I had not, up to that time, seen the interview. When I got back the paper was mislaid—when I came back from New Haven Wednesday evening—and Thursday morning I went to the Commercial office to get a copy of the paper of the 28th, and I wrote my card in an hour after reading it.

Mr. NORDHOFF. I am very glad to hear that, because I thought badly of you before. I take back anything I may have said, because that is the proper thing to do.

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WEDNESDAY, *June* 14, 1882.

JOHN A. RUDD sworn and examined.

By Mr. HAWLEY:

Question. There was a clipping from the Critic read the other day, it is on page 120 of the record. I will read it:

> The Critic this morning bumped up against a prominent statesman at the Capitol, who is usually informed as to what is going on around him, and asked him promptly what the Windom whisky investigation would amount to.
>
> "That depends," sententiously replied the statesman. "There is a lot of choice meat in this matter if only the committee can get at it."
>
> "Do you think any of the correspondents are mixed up in it?"
>
> "I haven't said so," replied the statesman with a significant smile. "But," he continued, "the committee might find out, say, from Mr. John M. Carson, clerk of the Ways and Means Committee, why it is that the whisky bill slid through that committee so expeditiously, got into the House without any particular report, and was sneaked through that body without a yea and nay vote being demanded or taken."

Was that your article, Mr. Rudd?—Answer. You will have to see Mr. Harris about that. He is the editor. I cannot give information out of the office.

Q. Do you decline to answer?—A. I do.

Mr. HAWLEY. I do not think there is any obligation to your chief that forbids your answering, in a lawful investigation, on oath.

The WITNESS. Well, if he says answer the question, I will answer it.

Q. Do you think he is higher authority than Congress?—A. Well, he is to me on those questions; being an employé of the newspaper I cannot give it away.

Mr. HAWLEY. If an employé of my newspaper should be called as a witness on the stand and would not answer I would discharge him.

The WITNESS. I suppose if he did answer you would discharge him.

Mr. HAWLEY. Well, if he confessed a mean thing, confessed a slander, I would discharge him right away, answer or no answer. Mr.

Chairman, I turn the witness over to you. I have no further inquiries to make.

By the CHAIRMAN:

Q. Did you write that article, Mr. Rudd?—A. No, sir.
Q. Do you know who did write it?—A. No, sir.

By Mr. HAWLEY:

Q. Was not that substantially what I asked you?—A. You asked me if I knew who wrote it.

By Mr. HARRISON:

Q. Did not you answer to Mr. Windom that you did not know who wrote it?—A. I do not know who wrote it.

By the CHAIRMAN:

Q. Did you furnish the information, then, contained in the article?—A. No, sir.
Q. Do you know who did furnish the information?—A. No, sir.
Q. Why did you, in answer to Mr. Hawley, say you must refer it to Mr. Harris if you did not know anything about it?—A. He asked me if it is my article.
Q. You know whether it is your article or not; why did you refer to Mr. Harris; what did you mean by referring to Mr. Harris?—A. He is the managing editor of the paper.
Q. What did you think Mr. Hawley's question was?—A. I inferred from his question that he thought I wrote it.
Q. Would you admit that you wrote it upon reference to Mr. Harris if you did not?—A. No, sir.
Q. Then why did you want to refer it to Mr. Harris?—A. Well, there are a great many things that I would not care to mention.
Q. If you did not write it, or did not furnish the information, and if you do not know who did write it, as I understand you to say, what is there in it to refer to Mr. Harris?—A. I could refer the whole article for information now, but I do not know who did do it.
Q. So you say now that you know nothing about who did write it?—A. I know nothing in the world about it.
Q. You did not furnish the information upon which it was based?—A. No, sir.
Q. You have had no talk with the man who wrote it?—A. I do not know, because I do not know who wrote it.
Q. Can you give us any clue as to who did do it?—A. The only man I can refer you to in the matter is the editor of the paper.

By Mr. HARRISON:

Q. You can give us the names of the local editors of your paper?—A. Mr. Harris is the name of the editor, and Mr. Ed. Brady is the assistant.
Q. I was not asking you about the managing editor or assistant, but your reporters, your locals. Who is your reporter here at the Capitol?—A. I am one of them; Mr. Heath is another, and Mr. Smith has been doing Mr. West's work.
Q. Those are the only three gentlemen connected with the paper who have the ordinary duty of collecting news at the Capitol?—A. Yes, sir; I report the Senate part; gather up all the news on the Senate side; and those other two gentlemen run the House.

Mr. HAWLEY. If you had told me those things when I first asked you the question I would see no difficulty about it.

By the CHAIRMAN:

Q. Mr. Harris is managing editor?—A. Yes, sir.
Q. What is Mr. Harris's given name?—A. Oscar.

A. C. BUELL recalled.

By the CHAIRMAN:

Question. Mr. Buell, we will continue for a little while your examination, if you please. When examined the other day, you stated in answer to a question from Mr. Hawley as to whether you had any information tending to show that any gentleman connected with the press, or any member of Congress, has received, or been promised, or has reason to hope that he will receive any valuable consideration whatever for his action concerning the whisky tax, among other things:

A. I do not know that I have put that in that form. I have probably put it strongly, intimated a suspicion to that effect. And I do not know that I would to-day—at least until I have an opportunity to consult with some other gentlemen—whether I would be willing to indicate the source of that suspicion. I do not hesitate to say, though, that the impression was produced on my mind that some members of Congress, and perhaps one Senator (I would qualify by "perhaps")—that perhaps one Senator had an interest or had reason to be interested in the passage of that measure beyond any natural prompting that he might have from his connection with public affairs and the public interest.

Are you prepared to state any more fully in answer to that question to-day, what you know about it?—Answer. Mr. Chairman, I would like to refer somewhat to other portions of my testimony the other day as a matter of privilege.

The CHAIRMAN. You may state whatever you desire in connection with it, and then come to this question which I have asked.

The WITNESS. It will be in the nature of an explanation, a more complete setting out of intention in some portions of it, and in order that misrepresentations which have been made in the newspapers may not be repeated, I have reduced what I have to say in this personal matter to writing. It is short.

The CHAIRMAN. You may read it. Put it in any shape you please. Make any explanations you please.

The WITNESS. If the committee please, before proceeding further, I desire, as a matter of privilege, to call attention to certain portions of my former testimony. My object is to explain or set out more clearly the meaning and intent of my language, so as to avoid the possibility of misrepresentation or distortion. I shall not consume much time. I have written the things I wish to say, so that there may be no dispute as to the text and no excuse for misreporting it. I ask this indulgence because my testimony has been subjected to most extraordinary misrepresentation as to its character and most extravagant distortion of its text by those whose business it is to create public opinion from this point through the press of the country; while the able editors in the home offices have seemed to consider those misrepresentations and distortions of sufficient consequence to call for a very considerable fusillade of abuse.

The misfortune is that the testimony which I gave will never be read, except perhaps by the proof readers at the Government Printing-Office, the members of the committee, and myself; while the public must draw its conclusions from the testimony which it pleased the reporter or agent of the Associated Press to impute to me. When to this is added the ingenuity of the special correspondents who were person-

ally involved in the issue, it will readily be seen that my chance of fair treatment was small indeed.

Let me show—

A SAMPLE OF THE MISREPRESENTATION TO WHICH MY TESTIMONY WAS SUBJECTED.

General Hawley referred to a paragraph that had appeared in the Critic, upon which the following colloquy took place, as reported by the official stenographer to the committee:

Q. You have in that article named Carson, Nordhoff, and Nelson.

A. I do not know that I would join the two statements together. I have no means of knowing, to state under oath, that either of those gentlemen could be retained for any sum whatever. I may have opinions which I would be willing to utter in a newspaper, and be personally responsible for, that I would not be willing to repeat under oath, because the responsibility of an oath is of a different character from that.

Then there is a sentence, "I have that impression from individuals." There were one or two verbal errors. The word "from" should be stricken out, and "as to" inserted, making me say, "I have that impression as to individuals." And I will say here that I used that phrase in order to draw a distinction between the two or three individuals whom I had in mind and the newspaper men as a class, whom I had been accused of traducing. Then I add:

I think there is, perhaps, one man named there—

That is, among those three—

whom I have reason to believe, as the phrase is, is "on it"; that is, that he sometimes gets valuable consideration for that sort of thing.

Then there is a parenthetical clause to the effect that it is apparently entirely irrelevant for the purposes of this investigation, and I would not name him.

Now that is the stenographic report, and here is the "testimony" which the able agent of the Associated Press gave on the same point:

Mr. Hawley then read an article clipped from the Critic, in which were mentioned the names of Messrs. Nordhoff, Carson, and Boynton, and inquired, "Whence came the rumor that justified you in associating the names of influential journalists with the subject of bribery and corrupt influences."

Witness did not know; he heard it passing around as a joke, as mere chaff, and laughed at it.

Now let it be borne in mind that these two extracts refer to the same colloquy. One is the report of the official stenographer, and the other that of the agent of the Associated Press.

Now, I stated in my newspaper the other day that in the seven or eight pages of the official report which I had gone over carefully, critically, I did not detect but three mistakes. Those were verbal inaccuracies, where one preposition was substituted for another. They did not affect the sense at all; so that, in point of fact, the official report was perfectly accurate. The other is that of the Associatad Press.

I submit this as a sample. If there is any similarity between the two in verbiage, context, or spirit, I cannot detect it.

Here is another sample, which I introduce by way of showing that the Associated Press reporter or agent was trying or pretending to try to report my testimony—of which fact the former sample may have raised some doubt. The following is from the official report:

Q. You have named three gentlemen of the press there, and in connection with that remark that $25,000 cash would have enlisted the "reformers" of Newspaper Row for life; I want to know whether there is any fact in the world upon which you base an insinuation against these three men in connection with this whisky business?

A. I did not intend that insinuation to lie against those three men in particular.

And, perhaps, I should have added there, to make myself perfectly clear, "in relation to this particular business." I have reason to believe that there are newspaper men who are not proof against the blandishment of money, and I used that phrase to indicate that belief, though I do not know that as a matter of fact, under oath, I would be willing to state that, because I never bought any of them myself, and would not like to say (under oath) that I thought a man was purchasable unless I had either bought him myself or seen somebody else do it.

The last "under oath" I would like to have put in parenthesis, because it does not appear in the official text. It comes in between "say" and "that" in next to the last line.

That is the official report I have just read.

And this is the way that colloquy appeared under the necromancy of the Associated Press man.

**Mr. Hawley continued: "Is there any fact whatever upon which you can base the insinuation against the three gentlemen named in that article?"**

**Answer. No; I cannot say information. I have reason to believe that one of the gentlemen named sometimes gets valuable consideration. I cannot say that I have any information or reason to suppose that either of the three gentlemen were in any way corruptly influenced in this connection.**

Now, that shows that the reporter was endeavoring to report what I was saying, and I introduce that as a sample to show that fact. The other was so entirely unlike the colloquy which it was supposed to report that there might have been some doubt as to his intention.

Now, at this point I will explain briefly. Three men were named in one of my paragraphs. For the present I will deal with two of them—Nelson and Nordhoff. I said in my testimony "one," but I think I did injustice by that limitation. I said "one" because I happened to have that individual particularly in mind at that moment. But I ought not to separate Mr. Nelson from his congenial companion, and I will not. At a subsequent stage of the inquiry, as officially reported, Mr. Nordhoff asked as follows:

**Do you believe, or have you ever believed, that I would take money in a corrupt way?**

**To which I replied: "I have never *known* anything of the kind."**

With emphasis on the word "known," I have no *special* reason to believe so; with emphasis on the word "special."

[According to my recollection I used the word "specific" instead of special, but it is immaterial. The shade of difference in meaning is not sufficient to vitiate the sense.]

When I said I "had never *known*," I meant simply, as explained in a prior portion of my testimony, that I had never bought Mr. Nordhoff myself. That is my idea of what "knowledge" ought to mean under oath.

When I said that I "had no specific (or special) reason to believe," I meant simply that I had never seen anybody else buy Mr. Nordhoff. That is what I understand by the terms "specific reason to believe" under oath.

But I did not state or admit anywhere in my testimony that I did not believe or think that either Mr. Nordhoff or Mr. Nelson was on the make. I had no intention to so state or admit, because I do believe and do think that

THEY ARE BOTH ON THE MAKE.

Nevertheless, the Associated Press report would lead its readers to suppose that I retracted everything my newspaper had said about these

two men, leaving them in sole charge of the situation. I do not now say, nor did I say in my testimony, nor have I said in my newspaper, that I could prove that Nelson and Nordhoff were venal. That is the most difficult of all charges to prove; because, as a rule, there are but two parties to the act of bribery, and both equally interested in keeping it secret, for obvious reasons. Therefore, I suppose a man may go along for years levying contributions on everything that comes in his way, and

BLACKMAILING EVERYBODY

who gets in his power, and the public will have no means of finding it out except by the suspicions and inferences that his acts and associations may naturally or logically give rise to, and these, though often conclusive as bases of opinion or belief, can never be conscientiously adopted as the foundation of a sworn statement.

I have probably devoted more space to this subject than it is worth. I shall not devote any more. Mr. Nelson and Mr. Nordhoff are welcome to my opinion of them; and they are, or ought to be, aware that the cherishing of such an opinion does not make me an eccentric citizen in this community.

Now that is all I have to say on that point, and I thank the committee for the permission to say it.

Q. Well, Mr. Buell, you have intimated some pretty hard charges against both of those gentlemen, which have been called out in the ordinary prosecution of this investigation. Will you give us any reasons you have to base those opinions upon?—A. Well, I have said two or three times that I had nothing that I was willing to swear to or upon which I would base a sworn statement that either one of them had been corruptly influenced by the so-called whisky ring or had any connection with this pending business, and I would not have introduced this explanation but for the fact that those two gentlemen in their correspondence have seen fit to take a view of my testimony the other day which rather made me, unwillingly, furnish them a certificate of good character, which I did not intend to do, and this explanation I have put in here solely with a view to revoke that forged certificate of good character. That is all on that point. I do not know anything about those gentlemen. I have never had much to do with them, and nothing for the last two years or three. I have not watched their movements very closely. My opinion of them is based upon, as I said in this statement, suspicions and inferences, and upon current report and gossip. I suppose I have heard, I won't undertake to say how many, men, but a good many men of rank and consequence in this country, from Cabinet officers down, utter that opinion.

Q. It may be somewhat out of the strict line of the investigation this committee is directed to make, but it is due to the committee, it seems to me, Mr. Buell, that you should give us any reasons you have for reflecting upon these gentlemen?—A. I do not understand that this is an investigation into the character of these men, personally.

Q. No; but you have given your statement this morning which goes outside of the line of the investigation. You have cast some pretty strong imputations upon them, and it strikes me it is due to the committee, as well as to yourself, and to these gentlemen, that you should give your reasons for them.—A. Well, if I am to enter into a formal prosecution with these men on any charges I may have made, or, if I am to enter into a defense against any action they may see fit to take against

me on account of these statements for libel, or any other purpose, I shall have to have some time to consult and prepare. I would not undertake to go into an investigation of the personal character of these two men, or any other two men, without special preparation, which I have not made. I have simply been uttering my opinions. They may be utterly valueless. I have foundation for them that is satisfactory to me as opinions. A charge of bribery or venality is the hardest thing in the world to prove, and I do not suppose I could prove any charge of that kind against these two men, or against any other two men, unless the other party to the transaction, for some reason or other, might be willing to swear to it, and then his testimony would probably need corroboration.

Q. It is not the proof of these things we are asking, but the foundation you have for your opinion.

Mr. HAWLEY. I think Mr. Buell ought to name somebody who has spoken to him about it.

A. Well, I would have no hesitation, if it is a matter of satisfaction to the chairman of the committee; but I would not do it for the benefit of the public, for the reason that it will involve gentlemen in this controversy who have no business in it whatever, who do not believe in it and probably do not want to be dragged into it. As a matter of personal information, I would give a number of names cheerfully of gentlemen from whose utterances I have perhaps derived a good part of my opinions, but I do not want to throw out a drag-net and drag a large number of men, or any number of men, into a controversy in which they cannot possibly have any interest. I would not like to have a man do that with me.

By Mr. HARRISON:

Q. Well, if I understand you, as to these gentlemen you have no personal knowledge of any corrupt act on the part of any one of them?—A. Not relating to this particular affair or to any other particular affair.

Q. Do you not say as to any affair?—A. Well, I say knowledge of an act of that kind, for if I were to say that I knew a man had been bought the committee might assume from that fact that I had done it myself, because I would not know it unless I had.

Q. Well, not to go into any metaphysics about the matter at all, if I understand your statement, you have no personal knowledge of any corrupt or venal act on the part of any of these gentlemen you have named?—A. I have no knowledge of that character which would warrant me in stating of my own knowledge that I knew they were——

Q. You have no personal knowledge of any corrupt act of theirs? All you know about it is upon information and hearsay.—A. Information, hearsay, and inference.

Q. Inference, suspicion?—A. Yes, sir.

Q. Then the sum of your testimony is that you undertake to say that their reputation as journalists is tainted?—A. Well, you can put it in that form.

Q. Well, it is a fair statement of what you say, is it not—that their reputation is tainted?—A. Well, I did not use that language.

Q. I do not undertake, of course, to repeat your language. Your statement was voluminous. I can only try to epitomize it; that their reputation as journalists is tainted.—A. Rather than flatly assent to that proposition, I would prefer to leave my testimony just as I gave it; leave my own language in the statement I have made here.

Q. I do not see what objection you can have, Mr. Buell, to answering the question, whether their reputation as journalists is tainted.

You stated you have no personal knowledge. Now, does it not follow as a matter of necessity, if what you said is based upon hearsay and suspicion, that the sum of it is that their reputation is bad?—A. Well, I say that I have the impression concerning those gentlemen that I uttered in my statement.

Q. Then you would not be willing to go so far as to say that their general reputation as journalists was that they were venal and corrupt men?—A. Why, I do not feel called upon to say that at all. I have said all I desire to say on that point.

Q. I know; but then you know the limit of your desires may not be the limit of an examination here, and I think it is due, as that matter has come in——A. Well, I will say in answer to your question that——

Q. I do not know these gentlemen personally, but I think it is due to them that we should get as near the exact fact as possible about it.—A. I would not pretend to make my personal opinion of anybody the basis of a statement as to his general reputation. I may have a very poor opinion of a man and yet his general reputation be good.

Q. That is just what I am saying. It resolves itself into this, then: That you yourself know of no corrupt act; that you are not willing to state that their general reputation is bad, but you do state that in your individual opinion, they are corrupt men?—A. No; I do not think I stated that.

Q. Well, do you not state that in your opinion you believe them to be so?—A. I do not think I used the word "corrupt."

Q. Perhaps not; but did you not mean to convey the idea that there was corruption; being "on it," as you expressed it, your opinion was that they were for sale. I want to distinguish between that expression and the one I used—"corruption?"—A. I prefer to let every man draw his own distinction between these two terms.

Q. You make a distinction?—A. Well, I do not care to testify on that point, whether I do or not.

Mr. HARRISON. Well, that is all.

By Mr. HAWLEY:

Q. Do I understand Mr. Buell to say that he has no knowledge—*he has no knowledge*—that these gentlemen are purchasable? Is that so, Mr. Buell?—A. Yes, sir; I said that.

Q. Did you ever hear anybody else say that he had knowledge that they were purchasable?

The WITNESS. Do you mean by that to ask if I ever heard anybody say that he had bought these men?

Mr. HAWLEY. No; you refer to prominent people; you had heard prominent people say they were corrupt; that is the essence of your language. I wish to know whether you ever heard anybody in the world say that he had knowledge that these gentlemen were purchasable?

A. Well, general, with your permission, I will say that the Associated Press and newspapers of the country generally have been making so free with the essence of my language, or what they assume to be its essence, in the last few days, that I prefer to stick to the text exactly.

Q. I thought I was doing that very closely. What is the text you refer to?—A. Well, I did not use the word "corrupt."

Q. Well, purchasable. I do not know that you used the word "purchasable." Did you mean to say, then—just state it again, please, because I want to get exactly at your meaning.—A. I think I used the phrase "on the make."

Q. Well, that is to say, purchasable, is it not? We will confine our-

selves to the words "on the make;" that is slang; that is not very good English. Have you heard any person in the world say that he had knowledge that these two journalists were "on the make?" I will adopt your own words.—A. I do not know that I have ever heard a man say he would swear to it.

Q. But did you ever hear a man say, in the ordinary acceptation of these words as they pass among men, that he had information or knowledge of any sort that would justify him in saying that they were "on the make?"—A. Well, I could not recollect the exact shape in which the assertion was put.

Q. Then you would not say yes to that question; you would say no to that question, would you not?—A. I would say I have heard men had an opinion or belief to that effect, but I do not know that I ever asked specifically on what the opinion was based.

Mr. HAWLEY. Well. that will do so far.

The WITNESS. I might, if it were necessary, elaborate it——

Mr. HAWLEY. I am not particular. I do not care about its being elaborated. That answers the purpose. I do not understand that you know anything, or ever heard anybody else say that he knew anything. It amounts to this, does it not; that you have heard people speak bitterly against them?—A. I do not know that there was any bitterness in it.

Q. Are you not personally at odds with these gentlemen?—A. Well, I do not like either one of them very well.

Q. And say on oath here that you think they are "on the make," and you have nothing in the world to justify it?—A. I do not say that, general.

Q. You say you believe they are "on the make," do you not?—A. I do, yes, sir.

Q. And you have not a fact in the universe to justify it. Have you even a fact; have you anything more than suspicions and personal hostility to base it on?—A. Well, I do not base it on personal hostility at all. I had that opinion before I ever had any personal hostility to them.

Q. Have you any fact in the world, or do you know anybody else that you ever heard who had a fact to base it on?—A. Now, general, if you want to go into an investigation of the character of these gentlemen——

Mr. HAWLEY. No, I do not; that is a fair question.

The WITNESS. And if you will clear your room I will give you a list of witnesses you can summon on that point. If it is the object of the committee to investigate the character of these gentlemen, I have no objection.

Q. It is entirely a side issue, but I think it is simply decent justice to the gentlemen referred to to follow it for a moment at any rate. They are not on trial; we do not expect to put them on trial, but I do not think the committee ought to let any person in the world go off with charges of that sort without a brief answer. I do not understand you to say that you have a fact or know anybody else to say that he had a fact to justify charging those gentlemen with corruption.—A. I said in my statement, which the committee was kind enough to admit, that I had no knowledge that I called personal knowledge. I meant by that that I had never either purchased these gentlemen's opinions myself, nor had I seen the transaction in which anybody else purchased them. I do not know that I ever heard anybody say that he had done so himself—seen it done.

Q. Then it is purely a matter of opinion. You believe they are "on the make;" that is the amount of it.—A. Well, I would give the same answer to that, that I gave before.

Mr. HAWLEY. Oh, I do not care to follow it any further, unless some gentleman of the committee thinks it is necessary.

By the CHAIRMAN:

Q. I will repeat the question I asked in the first place, Mr. Buell. On page 119 of the testimony, in speaking of what you had been informed, as I understood it, by members of Congress and others, you say:

I do not hesitate to say, though, that the impression was produced on my mind that some members of Congress, and perhaps one Senator (I would qualify by "perhaps")—that perhaps one Senator had an interest or had reason to be interested in the passage of that measure beyond any natural prompting that he might have from his connection with public affairs and the public interest.

A. Yes, sir. I stated here, on page 120, line 10, in reply to General Hawley's question:

The most I could do would be to give the general substance of conversations in any event, and I would very much prefer to consult with the gentlemen with whom I had those conversations, before I undertook to give them. Even if I knew that they were perfectly willing that whatever they said in the matter should be repeated, I would rather consult them more fully, because I will not trust my memory to repeat, under oath, a month or two afterwards, conversations which I had with any man, especially in a matter as grave as this.

Now, I have been unable to see one of those gentlemen on account of his absence from the city, and he will not be here until next week. I have not communicated with him by letter, because I do not know exactly where a letter would find him, and I would therefore ask that my examination be postponed until he comes.

By Mr. HARRISON:

Q. Is that necessary as to others who are here? If there were others, as I infer, with whom you have had an opportunity to confer, might we not very well go through with that, and then defer any further examination?—A. Well, of the others I have talked with two, and I find that at this stage their recollection of our conversation does not embody anything that would be worth anything to this committee.

Q. Does it agree with your recollection of the conversation? because that is what we want.—A. Well, the substance of their communications to me was the utterances of suspicion and belief. I asked them more particularly, or one of them at least. I did not have much conversation with the other. He simply said, "You must not mention my name in this connection, because it would do no good, because I know nothing about the matter, and do not want to be mixed up with it. I merely gave you the benefit of my suspicions, which resulted from my observation of the manner in which the bill passed, and the temper of those who had it in charge."

Q. Well, did that agree with your recollection of what he had said to you?—A. Oh, yes; my recollection was not—I could not recollect any phrase he used, or anything of that sort. I certainly could not recollect his stating to me that he knew——

Q. Then, as I understand it, that man has said to you that what he said to you was mere matter of suspicion, based upon what he regarded as suspicious circumstances attending the passage of the bill, and that that agrees with your recollection of what he said to you?—A. Yes, sir.

Q. Now, as to the other with whom you talked?—A. Well, I really

had but one conversation of any great length or importance whatever with any member of Congress on that subject. That gentleman is not here.

Q. Well, now, I want the other one, the one who is here.—A. The statement that I made would substantially cover both these cases. Both those gentlemen refused to be mentioned in any way in connection with the matter, and said they had simply uttered to me their suspicions and belief; they were opposed to the bill, both of those men; but that they had no personal knowledge of any corruption in connection with the matter at all, or any improper conduct on the part of a member of Congress or anybody else, but were merely suspicious by reason of what they regarded as suspicious features. That was about the substance of it.

Q. And that agrees with your recollection of the conversation you had with these men?—A. It is bound to.

Q. Well, it is not bound to. You do not mean to say that you adopt their memory for your own recollection, do you?—A. I do not exactly catch your meaning.

Q. Well, this is what you say; your memory is bound to agree with their present statement to you as to your conversation with them?—A. As to the substance of it, yes.

Q. That is, you would not surrender your recollection to theirs?—A. Well, I have no particular minute recollection to surrender; only a general one.

Q. Therefore you accept as probably true their present recollection of what was said between you?—A. Yes; that our conversation was about the circumstances attending the passage of the bill which were extraordinary, unprecedented, and calculated in themselves to furnish a tone of circumstantial evidence against the morality of the modes employed.

Q. Now, we have disposed of those two. Now as to the gentleman who is absent: Is it your recollection, in your conversation with him, that he professed to have any knowledge or information tending to show that corrupt means of any kind had been used in Congress, or about Congress; or was his statement to you, according to your recollection, like these others?—A. Well, as that gentleman will return in about four or five days, and as I suppose the matter of time is not vital, I would prefer seeing him before I answer even that question.

Q. Well, you know, of course, in examinations of this kind, it is important to have the independent recollection of the witness rather than the recollection conveyed of the conversation by the person with whom he talked.—A. It is not with a view to altering my recollection of his conversation. I rather consider myself in the position of a reporter of a conversation, having derived a certain impression from it. Now, I do not want to consult him to see if my impression was particularly correct.

Q. Well, what is your objection to giving your present impression?—A. I have already done that. My impression, derived from that conversation with that gentleman and others, was that the whisky bill was a job put through here by corrupt means; that was the impression I derived.

Q. Now, we want to get right at these facts, if there are such facts here; and the question I asked is, whether your recollection of the conversation you had with this other gentleman who is absent is that he stated in that conversation that he had knowledge of any corrupt act or anything indicating corruption other than these general circumstances of suspicion which accompanied the hasty passage of the bill in

the House?—A. I do not know that he stated of his own knowledge that there had been anything of that sort.

Q. Did it differ in that respect from the conversation with the other two men substantially?—A. Well, it was stronger; no doubt about that; but whether the basis of what he said was actual knowledge or simple inference that is what I am not prepared to say.

Q. That you are not prepared to say. He did not disclose in his conversation whether it was actual knowledge or inference?—A. No, sir; he did not say A had corrupted B, or B had corrupted A.

Mr. HAWLEY. I would like to ask one question: Do you know any Congressman or member of the press who has bought whisky on speculation, or secured options in the whisky market?—A. No, sir; I do not know anything about the whisky market.

Q. I am probably rather green in this matter for not asking that question before, for there are various ways of corrupting people, and it is said that people have been corrupted in that way, bought options; and I did not know but that we might have escaped some knowledge. Have you any knowledge of that?—A. No, sir; if I had I would have given it in reply to one of the many general questions you asked.

Mr. HAWLEY. I suggest, Mr. Chairman, that we do not care to know what any gentleman, in Congress or out, may have said, because they are entitled to say it themselves; but if he has heard people speak as if they had knowledge, he ought to give us their names, and then we will ask them about it.

The CHAIRMAN. That is what we desire to get.

Mr. HAWLEY. I should not ask Mr. Buell what they said, because that is not fair. If there are any gentlemen who, from what they have said to him, appear to have such suspicions we should have their names, and then we will summon them and settle it in a very few moments whether they do know anything or whether it is mere gossip. For that reason I do not think it is of much consequence whether Mr. Buell sees these men or not. I do not think it is of any consequence at all.

The WITNESS. I will say that I feel bound to protect these men in case they should ask it, and if you will give me an opportunity I will explain the reason why in a few words.

A newspaper man has usually acquaintances who are his sources of information as to public affairs. Those men, as a rule, for purposes of their own, enjoin upon the reporter or correspondent when they give him a piece of news that it shall not be put in the form of an interview. I suppose every Senator on this committee has given information to journalists before now with the request that it be not put in the form of an interview, but simply stated.

Mr. HAWLEY. I understand perfectly that relation, and everybody does in these days of universal press, and I do not think the law or the usage of society acknowledges that that relation is analogous to that of the counsel to his client, or the physician to his patient. It is not protected in a court of justice.

A. Well, it may not be in a court, or anywhere else so far as I know.

Q. It is an honorable obligation in general society or in the press, but when you come to a court of justice it is not protected, and ought not to be, where the rights and character of other people are at stake.—A. Well, I prefer to protect them until I have their permission anyhow.

By the CHAIRMAN:

Q. You are not willing, then, to give their names?—A. Not to-day, no, sir; I wish to say, as I said before, that I am actuated solely by a desire to conform to the wishes of these gentlemen.

By Mr. HARRISON:

Q. As I understand you, Mr. Buell, you have already seen two of them, and they were not willing to allow you to give their names.—A. Yes, sir.

Q. Therefore as to them your refusal to mention names is final, is it not?—A. It don't amount to anything, anyhow. It would not if you knew their names. I do not think either one of them would appear before this committee, but if they were notified to they would get up and make a personal explanation in the House; at least that is what one of them said.

Q. Well, they have declined to allow you to mention their names; your refusal to give their names is final?—A. Yes, so far as they are concerned.

By the CHAIRMAN:

Q. And so far as the other is concerned you will wait for consultation?—A. Yes. Probably he will be here next Tuesday.

Q. Will you give us the names of the gentlemen who expressed a suspicion as to Mr. Nordhoff and Mr. Nelson?

The WITNESS. What do you mean—in relation to this particular matter?

The CHAIRMAN. No, in relation to their general character.

A. I do not know; I could not do that. I have been hearing that for two or three years. I could give some, perhaps, and if you want a list of them I will make one out.

Q. To the committee?—A. For you personally.

The CHAIRMAN. I have no personal use for it.

The WITNESS. Well, you could submit it to the committee if you chose to. I would not care to have it made public as part of the proceedings of the committee, for the reason that it is a side issue.

Mr. HAWLEY. My friend Mr. Cockrell suggests a very proper inquiry: "If the witness declines to give the names of persons who have intimated that Mr. Nordhoff and Mr. Nelson were on "the make," ought not his statement of mere suspicion to be stricken from the record?" I think it ought. I think everything he has said here should be stricken from the report. I do not think it is right to attack men who, in my opinion, are honorable gentlemen. I have no desire to have that statement go into the report.

Mr. HARRISON. Do you refer not simply to the statements furnished this morning, or does this proposition to strike from the record extend to statements in previous testimony of the witness as to these newspaper men?

Mr. HAWLEY. I do not press a motion. The committee can consider the proposition.

One more suggestion. There are a number of gentlemen of the press here, and I would like to say as one member of the committee that if there is anybody in the world that knows anything pertinent to this investigation I hope he will come and let us know, or forever hold his peace. If anybody has been bought, or has purchased options, or has a contingent interest of any sort or description, or if there be anything that affects the purity of legislation in the matter under consideration that this committee ought to know, I hope it will be brought to us, and no complaint hereafter be made that this committee has not been thorough.

Mr. COCKRELL. They can make the statement, and need not give the names if they do not want the names known.

Mr. HAWLEY. Yes; give us the names of any witnesses who know anything.

The CHAIRMAN. We shall be very glad to receive that information.

The WITNESS. I do not know that it is a proper request, but I should like to suggest to the committee the name of a witness, and I would like to accompany my suggestion of his name with some outline of his probable or possible knowledge.

The CHAIRMAN. We shall be glad to hear it.

The WITNESS. And I would prefer to do that executively. It will not take me more than three minutes.

Mr. COCKRELL. The committee will, of course, be glad to have the names of any parties.

EDWIN STEVENS:

The chairman submitted the following letter and statement, which he had received from Mr. Edwin Stevens to be included in his testimony:

[Stevens, Dair & Co., commission merchants. Edwin Stevens, Cincinnati, O.; Wm. Dair, Harrison, O.; C. E. Dair, Harrison, O., general agents for distillers and dealers in whisky, flour, malt, hops, and grain, No. 26 Sycamore street.]

CINCINNATI, *June* 7, 1882.

DEAR SIR: Please find inclosed statement of my account as treasurer of National Distillers and Spirit Dealers' Association from October, 1880, to May 1, 1882, showing total receipts from all sources of $9,000.11, and expenditures, $7,527.51.

Yours, truly,

EDWIN STEVENS,
*Treasurer.*

Hon. WM. WINDOM,
*Chairman Senate Investigating Committee, Washington, D. C.*

*National Distillers' Association, in account with Edwin Stevens, treasurer.*

DISBURSEMENTS.

| | | | | | |
|---|---|---|---|---|---|
| 1880. | | | | | |
| June | 20. | Cash: | D. Y. Rush, traveling expenses | | $225 00 |
| | 20. | | D. Y. Rush, salary | | 150 00 |
| | 22. | | Express-sage of drafts from Shufeldt | | 2 95 |
| Dec. | 9. | | D. Y. Rush, salary | | 150 00 |
| | 17. | | C. L. Peyton & Co., printing | | 145 00 |
| 1881. | | | | | |
| Jan. | 5. | | D Y. Rush, salary | | 150 00 |
| Feb. | 6. | | D. Y. Rush, salary | | 150 00 |
| Jan. | 6. | | D. Y. Rush, expenses, $96; Shufeldt, $116 | | 212 00 |
| | 27. | | Monarch Distilling Company, expense draft | | 40 00 |
| Feb. | 25. | | Peyton, Pratt & Co., printing | | 14 60 |
| March | 2. | | D Y. Rush, salary | | 150 00 |
| | 18. | | H. B. Miller, salary as president, one year | | 600 00 |
| | 29. | | Expense drafts, $5 and $7 | $12 00 | |
| | 29. | | W. H. Thomas, expense | 570 54 | |
| | | | | | 582 54 |
| April | 2. | | D. Y. Rush, salary | | 150 00 |
| | 5. | | C. L. Peyton & Co., printing and binding | | 492 00 |
| | 7. | | C. L. Peyton & Co., printing, Chicago | | 100 00 |
| | 11. | | C. L. Peyton & Co., printing, Chicago | | 72 00 |
| May | 4. | | D. Y. Rush, salary | | 150 00 |
| June | 3. | | D. Y. Rush, salary | | 150 00 |
| | 17. | | Collection expenses, Kentucky drafts | | 6 00 |
| July | 2. | | D. Y. Rush, salary | | 150 00 |
| Aug. | 6. | | D. Y. Rush, salary | | 150 00 |
| Sept. | 13. | | D. Y. Rush, salary | | 150 00 |
| Oct. | 6. | | D. Y. Rush, salary | | 150 00 |
| | 7. | | Charges for collections of California drafts | | 6 96 |
| | | | | | 4,299 05 |

CONTRA.—RECEIPTS.

| | | | |
|---|---|---|---|
| Collections from | Massachusetts | 330 00 | |
| | Missouri | 440 00 | |
| | Mississippi | 10 00 | |
| | Kentucky | 450 00 | |
| | Illinois | 580 25 | |
| | Pennsylvania | 460 00 | |
| | New York | 220 00 | |
| | Maryland | 170 00 | |
| | California | 320 00 | |
| | Ohio | 860 10 | |
| | Indiana | 150 00 | |
| | Tennessee | 60 00 | |
| | Iowa | 60 00 | |
| | Virginia | 20 00 | |
| | Texas | 10 00 | |
| | New Hampshire | 10 00 | |
| | Kansas | 10 00 | |
| | Rhode Island | 30 00 | |
| | Wisconsin | 140 00 | |
| | Georgia | 30 00 | |
| | Nebraska | 60 00 | |
| | Michigan | 70 00 | |
| | Connecticut | 10 00 | |
| | Minnesota | 20 00 | |
| Received from former treasurer | | 109 76 | |
| | | | 4,630 11 |
| 1881. Oct. 8. Balance on hand | | | 331 06 |

EDWIN STEVENS, *Treasurer.*

*National Distillers' Association, in account with Edwin Stevens, treasurer.*

DISBURSEMENTS.

| | | | | |
|---|---|---|---|---|
| 1881. Oct. 28. | Cash: W. H. Jayne, printing | | $75 00 | |
| Nov. 11. | Expressage drafts | | 25 | |
| 11. | Pratt & Co., printing | | 235 10 | |
| 16. | D. Y. Rush, salary | | 150 00 | |
| 18. | Expressage drafts | | 25 | |
| Dec. 3. | D. Y. Rush, salary | | 150 00 | |
| 1882. Jan. 5. | D. Y. Rush, salary | | 150 00 | |
| 9. | Expressage Baltimore drafts | | 1 35 | |
| Feb. 6. | C. S. Clarke, transportation expenses | $151 00 | | |
| 6. | H. H. Shufeldt, transportation expenses | 107 00 | | |
| 6. | H. H. Shufeldt, salary | 600 00 | | |
| | | | 858 00 | |
| 8. | D. Y. Rush, expenses at Washington, D. C | | 209 50 | |
| 16. | D. Y. Rush, salary | | 150 00 | |
| 23. | Shufeldt, expenses at Washington, D. C | | 355 00 | |
| March 2. | D. Y. Rush, salary | | 150 00 | |
| 13. | H. H. Shufeldt, expense account | | 94 01 | |
| 24. | D. Y. Rush, expense account | | 150 00 | |
| April 13. | D. Y. Rush, salary | | 150 00 | |
| 15. | D. Y. Rush, expense account | | 200 00 | |
| 29. | D. Y. Rush, expense account | | 150 00 | |
| | | | | $3,228 46 |

CONTRA.—RECEIPTS.

| | | | |
|---|---|---|---|
| Oct. 8. | Balance from last settlement | | 331 06 |
| | Collections from Minnesota | | 10 00 |
| | Virginia | | 10 00 |
| | Kentucky | | 380 00 |
| | Texas | | 10 00 |

| | | |
|---|---|---|
| New Hampshire | 10 00 | |
| Iowa | 50 00 | |
| Michigan | 40 00 | |
| Nebraska | 60 00 | |
| Rhode Island | 20 00 | |
| Maryland | 230 00 | |
| Tennessee | 50 00 | |
| Massachusetts | 390 00 | |
| New York | 280 00 | |
| Missouri | 360 00 | |
| Wisconsin | 120 00 | |
| Pennsylvania | 450 00 | |
| Ohio | 770 00 | |
| Illinois | 660 00 | |
| Georgia | 30 00 | |
| Indiana | 160 00 | |
| California | 260 00 | |
| Connecticut | 10 00 | |
| Kansas | 10 00 | |
| | | 4,701 06 |
| May 1. Balance in hand this date | | 1,472 60 |

EDWIN STEVENS, *Treasurer.*

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JUNE 16, 1882.

OSCAR K. HARRIS sworn and examined.

By the CHAIRMAN:

Question. Are you connected with the Critic in any way, Mr. Harris?—Answer. Yes, sir.

Q. In what capacity?—A. I am managing editor of the paper.

Q. On page 120 of the evidence taken by this committee I find the following:

> The Critic this morning bumped up against a prominent statesman at the Capitol, who is usually informed as to what is going on around him, and asked him promptly what the Windom whisky investigation would amount to.
>
> "That depends," sententiously replied the statesman. "There is a lot of choice meat in this matter if only the committee can get at it."
>
> "Do you think any of the correspondents are mixed up in it?"
>
> "I haven't said so," replied the statesman, with a significant smile. "But," he continued, "the committee might find out, say, from Mr. John M. Carson, clerk of the Ways and Means Committee, why it is that the whisky bill slid through that committee so expeditiously, got into the House without any particular report, and was sneaked through that body without a yea and nay vote being demanded or taken."

Q. Do you know who wrote that?—A. I do not.

Q. Do you know who furnished the facts?—A. I know who furnished the manuscript to the office.

Q. Who was it?—A. That I decline to tell, sir.

Q. Do you know anything about the statement—as to who is referred to?—A. No, sir.

Q. You do know who furnished the manuscript?—A. Yes, sir; all manuscript passes through my hands.

Q. You decline to give us that information?—A. Yes, sir.

Q. Was it one of your editors?—A. Mr. Windom, I decline to say anything about that.

Q. On what ground do you decline to answer?—A. Well, I think the secrets of a newspaper office ought to be kept so far as that is concerned.

Q. That is the only answer you have to give?—A. That is all, sir.

Q. And your answer that you will not give the name is final, is it?—A. Yes, sir.

By Mr. HAWLEY:

Q. I wish to ask whether you have ever heard of any law that would justify you in that?

The WITNESS. What?

Q. Is there any justification in law for your claim that your communications are privileged?—A. I do not know that there is exactly, but I think it has got to be very much of a custom.

Q. Did you ever hear of that claim being successfully made in a court of justice?—A. I do not recollect particularly now.

Q. Have you ever had any legal advice that you could make that claim successfully?

The WITNESS. Have I ever had what, sir?

Q. Have you ever had any legal advice that you could make that claim successfully?—A. No, sir.

Q. Well, then, this is all your own notion?—A. Yes, sir; if you want to put it that way.

Mr. HAWLEY. No lawyer would so advise you, Mr. Harris. It is an unreasonable doctrine. I am sorry you take that ground, because this is a matter that, if it is untrue, is very severe, a very cruel slander, and if there be truth in it, it is a matter that affects the purity of legislation. We are charged with this duty of investigation, and a certain class of the public will say—as they will anyhow, I do not bother myself about that—they will say that the committee did not search as fully as they might—a certain class of newspapers will make that kind of charge. The newspaper that has been foremost here in Washington in intimating corruption utterly declines, through yourself and Mr. Buell, to give any of the sources of your information. There is where the case stands now. The committee can afford to leave it so, but the Critic cannot; neither can the newspaper press afford to leave it so. Having made charges, as honorable men, as citizens and press men, they should either back them up or back out. You cannot stand on that ground reputably in the community; that is all. I do not care to press it.

The WITNESS. We will accept all that responsibility.

Mr. HAWLEY. A man who accepts that kind of responsibility must suffer for it. There are men who accept responsibility for being very bad men, and they suffer the penalty.

By Mr. PUGH:

Q. Does the rule of secrecy cover all manuscript from whatever source, of whatever character?—A. Yes, sir; I have invariably refused to give the name of the author of anything, except by the consent of the party furnishing it.

Q. It does not make any difference what it relates to, or what its character may be, it is a secret as to who the author is?

Mr. HAWLEY. That is a rule outside of a court of justice. That is the rule in newspaper offices.

Mr. PUGH. I understand.

The WITNESS. Yes, sir.

Mr. HAWLEY. That is all right enough as a matter of curiosity, but it is not right as against a matter of justice.

By Mr. PUGH:

Q. Is there any special reason why the name of the author of this

manuscript should be kept secret?—A. Not any special reason, any further than it would be violating a rule we have laid down that we will not disclose what we think to be the secrets of the office.

Q. There is no other reason than that it is a violation of the rule of the office?—A. It would be a violation of confidence.

Q. Was the manuscript given you in confidence?—A. It was handed to me in such a way that I feel under obligations not to disclose.

Q. Did the author of the manuscript know of the rules of the office?—A. I do not know anything about that, sir.

Q. Did he enjoin secrecy on you as to authorship?—A. I do not recollect whether he did or not.

By the CHAIRMAN:

Q. Do you know anything about the circumstances mentioned in the article, Mr. Harris?—A. No, sir; no further than what you have read.

Q. No further than you find it in the statement; you have no other information except what is conveyed by the article itself?—A. No, sir.

The CHAIRMAN. That is all for the present. You will not consider yourself discharged, though, Mr. Harris.

WILLIAM N. HOBART sworn and examined.

By the CHAIRMAN:

Question. What is your residence?—Answer. Cincinnati.

Q. Are you connected with any organization having to do with the manufacture or trade in whisky?—A. I am a member of the firm of Maddux, Hobart & Co., and I am treasurer of the Western Export Association.

Q. You are treasurer of the association of which Mr. Miller is president?—A. Yes, sir.

Q. Mr. Miller was here the other day and gave his testimony. Have you read it?—A. I was just glancing over it at the time you called me.

Q. Mr. Miller gave us a statement of the assessments and amount of money paid in and disbursed by you, or by your organization, coming down to a certain time; but he could not complete it, and our purpose is to ask you to complete that statement, if you can. Have you the papers with you?—A. Yes, sir; I have the figures almost complete so far. The association is not quite wound up, but the figures will not vary a thousand dollars from what I have. There may be a few little items that are not perfected, but the details are almost complete. I can read the figures as I have them, if you wish it.

Q. Is it a long table?—A. No, sir.

Q. Well, you may read it, if you please.

The witness read as follows:

| | | |
|---|---|---|
| Total assessments from November 21, 1881, to May 1, 1882, omitting those who claimed to withdraw, did not pay afterward | | $713,701 88 |
| Credits to distillers: | | |
| Overassessments refunded | 8,109 26 | |
| Cost to association for exporting 3,088,742 gallons alcohol | 535,760 14 | |
| Bonus on capacity less than 50 per cent. run in distilleries | 111,290 40 | |
| Paid losses in high wines stored in Cincinnati and shipped | 41,117 44 | |
| Paid cost of running free high wines into alcohol and selling | 11,766 95 | |
| Salaries | 5,000 00 | |
| Expense account, printing, postage, traveling expenses of ex. com., telegraphing, &c | 1,493 47 | |
| | | 714,537 66 |
| Deficiency | | 835 78 |

| | | |
|---|---|---|
| Of these credits there are yet unpaid assessments | | 16,728 85 |
| Against which there are collectible debts due association | 14,623 17 | |
| And cash on hand | 1,269 90 | |
| | | 15,893 07 |
| Leaving deficiency as above | | 835 78 |
| Actual cash passing through treasurer's hands | | 324,787 43 |
| Exports have been paid for as follows: | | |
| 93,444 gallons at 7 cents | 6,541 06 | |
| 146,641 gallons at 10 cents | 14,664 10 | |
| 425,003 gallons at 12 cents | 51,000 38 | |
| 267,017 gallons at 13 cents | 34,712 16 | |
| 335,350½ gallons at 15 cents | 50,302 52 | |
| 222,390½ gallons at 17 cents | 37,806 26 | |
| 1,598,896½ gallons at 20 cents | 319,779 30 | |
| 3,088,742½ | 514,805 78 | |
| Additional loss on alcohol exported by association, included in above statement | 20,954 36 | |
| | | $535,760 14 |

Average cost to association per gallon, 17⅓ cents.

Q. You submit those papers, do you?—A. Yes, sir; those I propose to leave with you.

By Mr. COCKRELL:

Q. That covers the entire business of the association, as I understand it?—A. That covers the entire business. That table covers the entire business, with the exception of a few hundred dollars not yet fully settled. It covers the entire liability, I think, unless there may be some little expense items.

Q. Well, it covers the aggregate amount collected?—A. Yes, sir.

Q. And the aggregate amount expended thus far?—A. Yes, sir.

By the CHAIRMAN:

Q. These assessments began in November, 1881?—A. November 21, 1881.

Q. That was the first assessment?—A. That is the first assessment.

Q. When was the last one?—A. The last one was made about the middle of May, to cover a deficiency found to exist; but the association terminated on the first day of May.

Q. What was the amount of the last assessment in May; is that included in here?—A. That is included in there.

Q. What was the total amount of the last assessment?—A. I can tell you in a moment. I think I have got it here.

By Mr. COCKRELL:

Q. May be, if you have the assessment list, you had better give the amount of each assessment, and the date of it?—A. I do not know that I have got it exactly in that shape. I have got the reports of each collection.

Q. Well, then, give what the last assessment asked for.—A. The last assessment amounted to $44,962.

Q. When was that levied?—A. That was made May 12.

Q. That was made to pay up the debts of the concern, you say?—A. Yes, sir.

Q. What was the last assessment previous to the one you have just given us?—A. The one previous to that was the April assessment. I think I have that here. That is the regular April assessment—the as-

sessment as collected. What I mean by assessments as collected is that assessments were made on what the distiller was expected to mash during the month, and this required adjustment, of course, at the close of the month, and varied very frequently from the printed assessment list. As collected it was $91,878.

Q. Which; the April assessment?—A. That was the April assessment; yes, sir.

Q. The assessment as made was larger?—A. The assessment as made was somewhat larger; yes, sir.

Q. Do you know how much larger?—A. I could not tell without footing these figures. I could tell in a few minutes.

Q. But you have given the total amount that was received?—A. I have given the total amount of the assessment as collected. It was not all collected. On that the distillers were notified, and they sent notices to me of the actual amount they mashed, and I sent the assessment.

Q. Then $713,701.88 is the total amount from every source that your association has received?—A. Yes, sir; I think I made a foot-note of the actual amount of cash that passed through my hands. I will explain that by saying that the distillers are charged with assessments. They are charged with the assessments and credited with the bonus, and, consequently, the balance is what I collected.

Q. "Three hundred and twenty-four thousand seven hunudred and eighty-seven dollars and forty-three cents"—that is the amount of actual cash?—A. That is the amount of actual cash that passed through my hands.

Q. The balance was settled by adjustment?—A. Yes, sir; and the items of credit contain the entire sums.

Q. I was going to ask what these credits to distillers meant?—A. I put it so because there is about $16,000 not paid yet. So, in order to bring it out clearly I simply put it down as a credit.

Q. "Over-assessments refunded, $8,109.26." What does that mean?—A. That occurred very frequently. Assessments were really payable the first part of the month; and very frequently a house which had a certain mash at the beginning of the month would cut down during the month, and at the end of the month, were consequently entitled to rebate for what they had not mashed, and those were credited as over-assessments.

Q. "Exporting 3,088,742 gallons of alcohol, $535,760.14." That is made up of these items on the other sheet that you have given us?—A. Yes, sir, That is made of those items on the other sheet.

Q. "Additional loss of alcohol, exported by association, included in above statement, $20,954.36." What does that mean?—A. There are some distillers in certain localities, mostly in the neighborhood of Cincinnati, that it was necessary to place on alcohol. They could not run alcohol as profitably, consequently the association employed Stevens, Dare & Co. to take the alcohol off their hands and ship it East, and there was a loss on that amounting to $20,954.36., and that was paid to Stevens, Dare & Co.

Q. So Stevens, Dare & Co. were paid that amount?—A. They were paid that amount; yes, sir; except what is due them; that is their credit.

Q. "Bonus on capacity less than 50 per cent. run in distilleries, $111,290.40." What does that mean?—A. When the association was formed it was on the basis of half capacity. The assessments all stated the one-half capacity of the distillery, and what they are assessed on. The Garden City Distilling Co. was allowed 1,045 bushels for one-half

capacity, and its average daily mash was 300 bushels. Now, if these distillers mash less than half capacity they were allowed a credit, were paid a bonus for the amount less than half capacity which they mashed.

Q. That was to induce them to produce less?—A. Yes, they varied. We had to advance the bonus on capacity as we advanced it on alcohol; as we advanced the alcohol bonus, we advanced the bonus paid for less than 50 per cent.

Q. Your purpose, then, in the whole thing was to send it out of the country, or have less production?—A. Yes; it made no difference to us which was done. In fact it costs us less to cut down capacity than to export. A house that could not cut down, we had to take the goods off their hands and export them. We paid losses on high wines stored in Cincinnati, and shipped to other points $41,117.44.

Q. Please explain that.—A. The Cincinnati market is the controlling market for the whole country, on the price of high wines; and the price of high wines controls the entire product of domestic goods; these domestic goods are exclusive of bourbon and rye whiskies. Bourbon whiskies were not brought into this in any way. These were merely high wines, spirits, alcohol, &c. The price of high wines, as sold in Cincinnati, controls the price of everything in the United States. The price of domestic goods is much over the market price of high wines in Cincinnati. Consequently the Cincinnati market was a very important one, and I do not know if we had not kept the Cincinnati market up to the price that would justify distillers in running, but our association would have been a failure. And we found after the tax agitation commenced, that even at 50 per cent. there were altogether too much high wines. Owing to the tax agitation in Congress, the trade did cut down considerably during the months commencing with the middle of February, running through March, and toward the latter part of April, and the amount of high wines made on the 50 per cent. capacity basis was more than the Cincinnati market could stand, and the decline in that, making a decline in the whole country, it was necessary that those high wines should be taken care of in some way; so the association arranged with the same firm that they had with the alcohol stocks, Stevens, Dare & Co., it being a commission house, that they should take care of these surplus high wines, and they were disposed of. They were sent where it was thought they would do best. The result was a pretty heavy loss which the association would stand. That, as you have seen, was a little over $40,000 I think. I might have brought the exact number of barrels taken out of the Cincinnati market. My impression is that it was between three and four thousand barrels.

Q. These figures were taken from the exact disbursements made?—A. Yes, sir; I even brought the vouchers with me in case the committee might want them.

Q. "Paid cost of running free high wines into alcohol and selling, $11,766.95." What does that mean?—A. That was another way of disposing of these surplus high wines. After we found the expense of shipping away, consigning to other markets, was so great, that is, the loss was so heavy, we adopted another plan; we took the free high wines and made them into alcohol and sold the free alcohol. That is, of course, a good deal more expensive to make than alcohol in bond, because in one case the government stands the shrinkage, and in the other case the seller, of course, has to stand it. I mean shrinkage on the tax; and that costs about $11,000; very much less than the same amount of high wines would in shipping away from there.

Q. "Salaries $5,000." What was that?—A. There was $2,500 salary voted at a meeting of the association to Mr. Miller, as president, and $2,500 to myself.

Q. "Expense account, printing, postage, traveling expenses of executive committee, telegraphing, &c., $1,493.47." What is that, a summary of the detail items?—A. Yes; that is the ordinary expenses of meeting of the association, printing of the reports, telegraph, postage, &c., and the traveling expenses of the executive committee to any point of meeting. They met regularly every month, and sometimes had a meeting oftener than that. They met almost entirely at Cincinnati and Chicago. That includes the expenses of the executive committee to those two points.

Q. Did you pay all these from that item?—A. Yes, sir.

Q. This is the correct footing?—A. There is no question about it at all. I have got it very carefully made up.

Q. Have you been here at all before during this winter?—A. No; I have not been here before this winter. I have not been in Washington since last winter.

Q. Do you know anything of the use of any money in any way directly or indirectly to promote legislation?—A. I never heard of the use of a dollar, and never suspected anything of the kind until I saw the statements in the paper. In fact I may say I did not suspect then, but that is all the information I have in regard to it; that is what I mean to say.

Q. Do you know of any person connected with Congress, either member or Senator, or any newspaper man, or any other person having business about Congress, buying any whisky in bond?—A. I do not, sir.

Q. Do you know of any one being interested in any, then?—A. I do not know of any one in Congress.

Q. I mean newspaper correspondents, or any one about Congress.—A. I do not know of any one connected with newspapers or Congress.

By Mr. COCKRELL:

Q. Do you know of any speculations on margins, of buying or selling of high wines, alcohol, or whisky of any kind?—A. I have not heard of anything of the kind. I think there has been very little of that done this winter. The fact became apparent a year ago nearly, that there was an overproduction, and there has been very much less trading in whisky since then.

Q. You do not think there has been any speculation of that kind?—A. I do not think there has, sir.

Q. You say you have not been here at Washington before during this session?—A. I have not been here during this session.

By Mr. HARRISON:

Q. You do not know of any whisky or high wines, or any of these cologne or other spirits being bought with a view of the effect of legislation upon the price?—A. I never heard of anything of the kind. I am pretty well posted in regard to the stocks of high wines, spirits, and alcohol, everything of that sort, and I am confident there is nothing of that kind held. I cannot say anything about the Bourbon whiskies, but I never heard of anything of the kind.

By the CHAIRMAN:

Q. Are you interested in the Bourbon whisky manufacture or trade?—A. No, sir; one of my partners is; but I have no interest beyond our own distilleries located in Cincinnati.

Q. And they manufacture high wines?—A. We manufacture what are termed continuous goods, whiskies made by continuous process; we do not make high wines.

By Mr. COCKRELL:

Q. Were you in favor of the House bill being introduced, and the bill that passed the House, and passed as proper legislation?—A. Well, I will have to go back a little to explain, perhaps, about the matter. About a year ago or not a year ago, last fall, in Chicago, I was opposed to the distillers coming to Congress and asking any legislation at all. I think Major Thomas and myself were probably almost the only two who took strong ground against it. I believed then that the distillers might get along very much better if they did not go to Congress; that they would simply disturb the trade, and would do no good. My impression was, that the action of Congress would be influenced by other matters, that the tariff question would enter largely into it, and that a simple request from the distillers would not make much difference. For that reason at that time I opposed the attempt of the distillers to influence the introduction of any bill whatever, either for the reduction of the tax or extension of the binded period. I thought that if the distillers would not overproduce during the winter, if they would not do anything at all, it would have a tendency to cut down the production, which was the main point. But they decided differently.

Q. Do you mean Major Thomas here?—A. Yes. They decided differently, and the result was—that as I look upon it—the result was a large overproduction again this past winter, and while I am still opposed to the reduction in tax, I came to see that an extension of the bonded period might be a very large relief to a great many people, and consequently I did feel in favor of that; so that I was not thoroughly in sympathy with the indefinite extension in bond. I should have preferred the bill as it was submitted to the Senate.

Q. That is, as it was reported by the Senate Finance Committee, five years?—A. Yes, sir; I should have preferred that to an indefinite extension.

Q. What will be the effect if there is no legislation?—A. Well, I feel very much afraid a good many people, not distillers alone, because a very large number of distillers have sold their product, but a great many of the trade, those with whom we deal directly, will be very much hurt by it, because they are holding large stocks of whiskies which must come on the market now—I do not mean old whisky—but the view they will take of it will probably induce them to place their '81 and '82 whiskies on the market at once at low prices, and I am afraid it will injure the trade.

Q. What class of persons will suffer mostly by it?—A. Mostly the wholesale dealers in the country; some distillers, of course, those who are holding their stocks, but the wholesale dealers, those to whom we sell, the jobbers. The distillers generally sell to the jobbing interests of the country.

Q. The distillers, then, as a rule, were not in favor of a reduction of the tax?—A. No, sir; I think the distillers generally were in favor of it. Our house is rather outside in the matter. That is one reason I have not been in Washington. Our house rather stood alone in Cincinnati. I think all the other distillers in Cincinnati favored the reduction of the tax.

Q. Do they all favor extension of the bond?—A. I think all the distillers favor the extension of the bond. I do not think there is any-

body who dissents from that unless some of those who thought that if it was kept out of Congress it would be better than to disturb it. After the distillers once got into trouble by having too much whisky on hand, I think there was a general feeling in favor of the extension of the bonded period.

Q. At that discussion in Chicago, was there anything about pooling issues with the tariff men in order to secure this legislation?—A. I do not remember that there was; I think not.

Q. Nothing was said that they would join their influence for the purpose of reducing the internal revenue tax?—A. Such a remark may have been made, but I do not recall it now. It did not take any definite form. There was no action in any way.

Q. When will this stringency or bad effect be felt; when will that commence in the event of no legislation?—A. I look for it during the coming summer and fall. I believe that the whiskies made in Kentucky the last year, a great many of them at least, made last year under a low price for corn—I mean '81 whiskies made under a low price for corn, which have been held without any very great expense, of course—will be put on the market. Holders will think it wise to put them on the market and work them off as cheap goods, rather than run the risk of waiting for the bonded period to mature.

Q. Well, the bonded period of that kind of whisky is off some distance, is it not?—A. It is 1884. It would not be until 1884 or 1885; but I think people will be afraid to hold whiskies. I think they will think it is better to realize, to stand the loss on them, than to run the risk of holding them until the bonded period ends. That is what I am afraid of—making trouble in the country. These whiskies, forced on the market, will cause a very great depression.

WILLIAM H. JACOBS sworn and examined.

By the CHAIRMAN:

Question. What is your residence?—Answer. Louisville, Ky.

Q. What is your occupation?—A. I am a book-keeper.

Q. Are you connected with any distiller's association?—A. I am.

Q. In what capacity?—A. I am secretary and treasurer of the Kentucky Distiller's Association.

Q. What is that organization; what is the nature of it; when was it organized; what is its purpose, &c.?—A. I have not been connected with it since its first organization, and am only temporarily connected with it now. It was organized, I understand, in April, 1880—about that time.

Q. You became connected with it at that time?—A. No; it was organized at that time. I became connected with it sometime in April, 1881, temporarily.

Q. Where are its headquarters, if it has any?—A. Louisville.

Q. How large an association is it?—A. We have thirty-two paying members, I think.

Q. What are its purposes and objects?—A. The object is a sort of union to obtain and carry forward any measure that would promote the general interest of distillers in Kentucky; holders of whisky.

Q. It is composed of distillers who make a certain class of whisky, I suppose?—A. Yes, sir; it is composed of Kentucky distillers.

Q. Does it include dealers, or only distillers?—A. Both. There are some dealers and distillers as well.

Q. Do nearly all of your members reside at Louisville, or are they

scattered over the State?—A. We have one in Cincinnati, and the balance are in Kentucky.

Q. Have you levied any assessments upon your society of any kind?—A. We have.

Q. Please state when, and how much.—A. These assessments were ordered levied the 28th of September last, the date of our annual meeting for election of officers, &c., $25 a member.

Q. For what purpose?—A. That is to pay the general expenses of the association.

Q. What do you mean by general expenses?—A. Well, we have attorneys employed, resident and foreign, and telegraphing, printing, &c.

Q. What use have you for attorneys; what is their business?—A. We frequently get into trouble about the government assessments in which distilleries are not run, or, if not run, some technicality in the law, that we must have assistance in making up our papers, making application for rebate claim, &c.

Q. Have you employed attorneys for any other purpose?—A. Nothing further than to assist and advise the association here and at home.

Q. Mr. Wharton is your attorney, is he not?—A. Yes; at this point.

Q. What compensation do you pay him?—A. $5,000 a year.

Q. How much of it have you paid him?—A. We have paid him $4,000.

Q. What do you mean by foreign attorneys?—A. Well, he is, in that sense, our attorney here. We have an attorney at home, Col. John Mason Brown.

Q. Have you levied any other assessment than the one named?—A. We have. Our executive committee has a right to levy. This $25 a member did not cover the amount necessary to pay our general expenses, and our executive committee has ordered a further levy to be made upon the distillers generally, a few of whom only have responded. Perhaps we have collected $300 or $400.

Q. What was the amount of the second levy?—A. Well, the levy was ordered to be 25 cents per bushel for an average daily mash. It was a matter in which we could not tell what it would yield, for we did not know the mash of the different distilleries. Perhaps there are 400 distillers in Kentucky, many of the names of which I have never had.

Q. Did you make no estimate of what that would produce?—A. No, sir; we just simply made an assessment.

Q. Was that made only upon members?—A. It was made upon all as far as we had the names. That is, it was made in this way: I will state that a number of gentlemen, distillers, were named in Kentucky to act as agents at the different points to make this levy and to rate them accordingly; that was the action and direction of the executive committee. W. H. McBrayer, of Lawrenceburg; William Tarr, of Lexington, I believe; Mr. McKibben, and I don't remember, there were some five or six gentlemen selected in that way.

Q. As a committee to make the assessment at the different points?—A. Lexington, Frankfort, and other points. The Lawrenceburg people have sent us about $400.

Q. Your assessment, as I understand you, was 25 cents per bushel on one day's run?—A. Yes; that was the assessment then made to pay off our indebtedness.

Q. Did you not have any idea of what that would produce?—A. No; we knew many would not pay, because in the 400 distillers we have but 32 members who have taken membership.

Q. Well, take an average distillery, of the average capacity of 100

barrels a day. How much would that give?—A. Well, it would be—do you mean an average?

Q. Yes. What would that be on a distillery of 100 barrels a day?

The WITNESS. A hundred barrels a day at 40 gallons, you mean?

The CHAIRMAN. Yes.

A. Well, of sweet mash whisky it would be about 4 gallons and a quart; of sour mash whisky it would be about $3\frac{1}{3}$ to $3\frac{75}{100}$, or something like that, to the bushel. At 40 gallons to the barrel the calculation could be easily made.

Q. Then on 40 gallons to the barrel 100 barrels would be 4,000 gallons. That would require about one thousand bushels of wheat or less!—A. It would be in the neighborhood of 1,000 bushels of grain.

Q. Then it would be not far from $200 to $250. What you would call an average distillery?—A. I do not know how they run.

Q. Well, an average distillery?—A. I do not know; an average daily mash is the language used.

Q. What would you call an average daily mash?—A. Well, we commenced mashing on 500 bushels. We have increased to 700 or 800; we commenced, perhaps, at 700, I do not remember. It ran up to a thousand, increased to 1,400, dropped back to a thousand, and goes backward and forward. We sometimes have to reduce capacity. At other times we run up capacity. We cannot tell until the end of the year our average daily mash.

Q. I know that you cannot exactly, but I want to get at some general idea of what your assessment would be expected to produce.—A. I cannot tell, because it depends altogether on accident.

Q. You must have had some idea of what amount of money you wanted to raise?—A. We knew in this way—in a general way—that our thirty-two members were very slow about paying, and we knew if we got anything at all it would be very small, in any sense.

Q. When was that assessment made?—A. It was made, I do not remember the date, but possibly in March last.

Q. Why did you need more money at that time?—A. Well, we had only collected a very small amount; we were owing Colonel Wharton and others, and we desired very much to keep up our association. Members dropped out, and others declined to continue, and in this our object was to get enough to pay it off, discharge our indebtedness, and keep up with it.

Q. Has there been any other assessment?—A. Nothing further. I neglected to add one thing, we collected from Owensboro' distillers $500, through Mr. Monarch.

Q. Can you give us the total amount of receipts from all your assessments?—A. Yes, sir; I can give you that. It is $4,749.

Q. Since when?—A. This includes $371.50, handed me by Mr. John Callaghan, the first secretary, on the 6th day of May last, a year ago. Since that time, adding to that, I have collected $4,427.50 for the Kentucky Distillers' Association.

Q. That is the total amount collected since what time?—A. Since the 6th day of May, 1881. The total amount collected, including the amount turned over, is $4,749.

Q. How have you disposed of that?—A. Shall I give you dates now? I have the dates of the different amounts. I have paid to our resident attorney, Col. John Mason Brown, $150. On the 30th day of January we paid Colonel Wharton $300; on the 3d of March we paid him $1,700; on April 12th, $1,000; May 27th, $1,000, making $4,000. Now, I have paid the Courier Journal $24.40 for printing, and have paid

printers there for printing postals and other notes which we sent out, amounting in all to $4,500. I will state this further: I make the statement here to-day for Mr. Atherton, and I do it to keep him from coming before this honorable committee, hoping it will answer the purpose. I failed to add $150 that I had paid individually to the Louisville Hotel for a supper given to the Kentucky distillers in April, 1881. I had paid it individually, and accidentally noted it afterwards. The total expenditures amounted to $4,696.60, and total receipts to $4,799, leaving in my hands $102.40.

Q. Have you been here in Washington since this bill has been pending?—A. This is my first visit to your city.

Q. Do you know of any money being paid to anybody except what you have named?—A. Not a cent. Now, I will say this: Our association has a president, first and second vice-president, secretary, and treasurer. Mr. KcKibben, our president, lives at Cynthiana; Mr. Buchanan, first vice-president, lives at Louisville, and Charles Mills at Cincinnati. It is inconvenient for Mr. McKibben to go to Louisville for the ordinary purposes of the association, and Mr. Buchanan was leaving for Europe, and asked Mr. Swearingen, for whom I am employed as book-keeper, to act as vice-president, or to act in his capacity during his absence in Europe. At the time he went away he handed me thirty-four drafts, of which I have here copies, for different amounts, for the National Distiller's Association, which I collected and turned over to Mr. Stevens, of Cincinnati, secretary and treasurer of the National Distillers' Association.

Q. What is the amount of the thirty-four drafts?—A. The total amount is $254. I think that is just the amount I remitted, and I have the items.

Q. Remitted to whom?—A. To Mr. Stevens, treasurer at Cincinnati.

Q. Do you know of any one connected with Congress in any way, either in it, or connected with it through the members, or otherwise, purchasing whisky in bond recently?—A. No, sir; not a man.

Q. You know of no promises of that kind being made to any one?—A. Not any.

WILLIAM H. THOMAS recalled.

By the CHAIRMAN:

Question. You have been here since this bill has been pending lately. Now state to the committee whether you know or have heard of any approaches of any one in Congress or in any way connected with it, of any newspaper man, or any one representing himself as a lobbyist or agent of whisky in bond during the last three or four months?—Answer. I do not know of any one at all, Mr. Windom.

Q. Have you heard of any one?—A. I have heard of no one; and if you will permit me to say right here, I cannot imagine any circumstances in the world under which a man could show another one why he should buy whisky. I do not see what inducement could be held out. I do not see what argument could be made to a man to get him to buy whisky. If the House bill had passed the Senate just as it came from the House it would not be possible for the smartest man in the country owning whisky to-day in bond to go and sell it and make any money on it. Now, you may not believe me, but this is God's honest truth.

The CHAIRMAN. You understand it, of course?

The WITNESS. I do understand it. I understand it thoroughly, and

I give you my word of honor, and I speak from a business stand-point, when I say that in the shape the legislation is now if I could find buyers for the whisky that I own—and I do not own a barrel upon speculation; I have been in the business a number of years, and I have not got a barrel more than my trade would ordinarily require—if a man was to come along to-day and offer to take my whisky at cost I would give him a check for $25,000. That is the condition we are left in.

Q. Have you heard of any one buying or being offered or promised in any way of the class of people I have mentioned a margin on this article?—A. No, sir; no one, whatever.

Q. Not any one, whatever?—A. No, sir.

By Mr. COCKRELL:

Q. Major Thomas, Mr. Hobart, I believe, said something about you and he being opposed to any attempt at legislation.—A. Yes, sir.

Q. State whether that is correct or not; whether you were opposed to it.—A. That is correct; and I am very glad you asked me that question, because it will enable me to explain that matter. I went to the Chicago convention, being a member of the National Distillers' Association——

Q. When was that convention held?—A. It was held at Chicago last October; I think it was October. It was a very full convention, and one of the first questions to agitate us and to interest the members was a relief bill. The distillers had sold all the whisky they had made in 1881, and contracted for all they could make in 1882, which they are now finishing. For instance, the month of June will wind up their contracts; and they had contracted for this whisky eighteen months or two years ago.

Men making contracts for double as much whisky as was made by them the year before went to work and erected new distilleries, and went to a very large expense. They had contracts with myself and other men, responsible men, good for their contracts, and I went to the convention and said, "Gentlemen, this is not the proper relief; do not go to Congress and ask for any legislation. Every time you go to Congress you disturb business; disarrange business. The true remedy for this thing is for the distillers who have made contracts with the buyers, the dealers, to meet them upon fair ground and compromise those contracts. Now," said I, "I have made a great deal of money out of the business myself for the last two years, and I would be very glad to give up a good part of that money to the distillers not to make the whisky." But they had gone to a great deal of expense; some of them had gone to an expense as great as $250,000 building new distilleries and warehouses, and they had a profit of from $4 to $8 a barrel in their contracts for whisky, and they felt that it was asking them too much to give up those contracts. There was the certainty of making so much money, and they wanted to hold to the contracts and did not want to release us. Many of us agreed to pay $2 or $3 a barrel, but when it came to paying $5, $6, $7, and $8 a barrel, it was more than we thought we ought to stand, and we concluded to take the whisky, and the result is there was the large over-production. Now, I listened to Senator Windom's speech yesterday, and heard it all the way through. From his standpoint, I think he is correct in many parts of it. For instance, we are to blame; we have largely over-produced. If we had not bought, the distillers would not have made. We are all sorry we bought, but the thing exists; and if you will look at Mr. Carlisle's report—the report from the Committee

on Ways and Means—you will find a statement of the whisky that the tax is due upon, every month from now on for three years to come, and you will find that next January it commences in the millions, and before two years have gone, it runs up to 5,000,000 a month. The average amount of whisky used of that class—whiskies made for aging—does not exceed 15,000,000 gallons a year. That is as much as the country has ever taken. I believe that is the most that has ever been taken. Now, when you come to take out of bond 5,000,000 a month (you will see by that schedule of General Raum that as much as 5,000,000 a month has got to be paid) you will find it will break every man in the business who is a borrower. It is bound to break him. I am glad you have called me again before you. I believe that this matter has got mixed up in some way. I do not think it has been thoroughly understood, and I do hope, for the sake of the business interests of the country, that between now and the time that will elapse before the next session your action yesterday, indefinitely postponing the bill, will be reconsidered, get it back into the Finance Committee, and, in the meantime, this investigating committee will have made its report. I believe that we are as honest as any people in the world. I think that we can show as clean a record; and I believe if that bill is recommitted back to the Finance Committee of the Senate some sort of a bill will be matured next December, when you meet, by which you can prevent a great disaster that is hanging over us. The business that we are engaged in does not attract the sympathy of the people of the country. It is true that while we pay an immense amount of money to the government—sixty-odd millions a year—we are looked upon with suspicion.

Mr. HAWLEY. Mr. Thomas, can Congress afford, in its general charge over taxation of all kinds, to be trying to protect men from speculation and from over-production, and that sort of thing. Is it not best, in the long run, for the dealers—as I think you thought a few months ago—to leave them without disturbance, or threatened disturbance, and then, if there is likely to be a cramp in the market, they will see it some time usually in advance, and keep out of it; but if you are in the habit of giving these reliefs or extensions, is not that rather encouraging over-production and speculation—because men think if there is going to be a little cramp they can run right here and change the law?

Mr. THOMAS. Let me answer that right here. Now, you will have the impression that this thing has been done before, and if you grant any sort of relief we will take advantage of it.

Mr. HAWLEY. I mean that speculators will not be so much afraid of over-production and accumulation, and purchasing in advance, and all that sort of thing, if they think that there can be at any time relief obtained by change of taxation in some shape.

Mr. THOMAS. I will put you a case. I have got some little feeling on this thing, and, perhaps, I cannot express myself very clearly; not feeling any resentment, but feeling that we are misunderstood, have been badly hurt, which is not the fault of Congress. I think Congress has been exceedingly liberal to us; they have given us all the legislation that we wished and, it is true, we have abused it. There is no doubt about that; we have abused it. But it is not the extension of the bond at all. It is the revival of good times, plethora of money, and all that sort of thing, that helped to bring this condition of things about. Then this liberal legislation you gave us in 1880 helped. There is a various number of things which helped to bring it about. The men who made this over-

production are in Pennsylvania, Maryland, and Kentucky. Those are the three States that have done it. This immense volume of whisky lies in those three States. It is the whisky that is really not marketable until it is three or four or five years of age. Now, if that bill had passed the Senate just as presented by the Finance Committee, I do not think it is possible, with my knowledge of the business of the country, that a distiller in Kentucky, Maryland, or Pennsylvania could go on the market and sell his goods for the next year, or the year afterwards, for one-half of what it would cost to make them. Why? Every buyer in the country is loaded up with more than he can possibly sell. There is no sort of law you could pass that would induce the men who have been buying this whisky for years and years and paying the tax to the government through the distillers, to buy any more whisky for years to come. We have all learned a lesson. Now, I will tell you what would be a great relief, a very great relief. Now, I will take my case, and I am only one of about 10,000 all over the country. I have got 150 barrels of whisky to take out of bond and pay the tax on. My business has been over $40,000 a month, and has run down to $2,500, or less than $5,000, in sales. This legislation has stopped sales except for whisky for consumption; there are no speculative sales. Now, on the 1st of the month I want to borrow to pay that tax. I go to a bank. It sees my necessity and wants a big rate of interest. If I have already borrowed the money on the short price of whisky, the bank is going to be very limited in the amount it will loan me to pay the tax. I put that whisky in my warehouse and cannot sell it. If the government would let that whisky stay in bond two years longer and would charge me 5 per cent. interest for the time, I will go around, I will get rid of my whisky; the trade will take it; the government gets a good rate of interest for its money, and I possibly—or many of us, not myself, I am in better fix than thousands and thousands of others—but to the man who is a borrower, who has borrowed money on his whisky, it would be the greatest relief in the world if the government would give him a credit of two years. We deserve and are entitled to it. We have, as the facts will show, in the last ten years paid over $700,000,000 to the government.

GABRIEL C. WHARTON, recalled.

By the CHAIRMAN:

Question. I want to ask you, Mr. Wharton, whether you know or have heard of any one connected with Congress in any way, either a member thereof, or connected with it through the press, or in any other way, purchasing whisky in bond during the last three months?—Answer. I have not.

Q. Do you know of any contracts, promises, options, or margins, or anything of that sort?—A. I do not know any member of Congress or Senator who has in three months, or ever, bought any whisky.

Q. Or anybody who represented themselves as aiding—newspapermen, or any one in that connection?—A. No, sir; I never owned a barrel of whisky, and never heard that anybody connected with the bill owned any except the distillers and dealers.

Q. Do you know of any inducements, promises, understandings of any kind with any member or Senator or newspaper-man that would influence his interests in any way; interest him in it in any way?—A. None at all.

Mr. THOMAS. Mr. Chairman, if you have got time, I wish you would

call Mr. Hobart again upon this question about which I spoke. He is ex-president of the Chamber of Commerce of Cincinnati, and one of the most intelligent men in the country.

The CHAIRMAN. I have no objection.

Mr. HOBART. I stated in my testimony that it would undoubtedly affect the wholesale dealers very materially. Those who have purchased whisky undoubtedly will have to suffer a pretty heavy loss on it. Those distillers who are still large holders of the Bourbon whiskies will no doubt suffer very heavily indeed. They must; they have got to realize on a large part of their whiskies. We will have the double trouble of the tax to be paid on whiskies that were made in 1880, and the fact of the new whiskies which have been made in the last year and made in 1881 being sold to go into immediate consumption as common goods to take the place of goods ordinarily made continuously from high wines. So my impression is, in our own business and the business of the Western Export Association, we will have to let that enter into our calculation. We have got to let a large amount of whiskies that have cost a large amount of money come into competition at a low figure. I doubt whether those whiskies will sell at two-thirds of their cost, a good many of them.

The CHAIRMAN. Well, you are not in any worse condition, I take it, than you were before the bill was introduced.

Mr. HOBART. No, sir.

The CHAIRMAN. And your opinion at the convention at Chicago last fall was that a bill had better not be introduced.

Mr. HOBART. If nothing had been done there would not have been nearly as much production this year. I thought the whole thing was a very great mistake, and still think so; but now that the dealers are in trouble about it the thing is to help them out. I say, personally, it makes very little difference to us. We have not piled up any great amount of whisky nor bought it. I am speaking for the trade and not for myself.

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MONDAY, *June* 19, 1882.

D. G. RUSH sworn and examined.

By the CHAIRMAN:

Question. Please state your residence and occupation.—Answer. I am a resident of Chicago, Ill. I am secretary of the National Distillers' Association.

Q. Is that the association of which Mr. Shufeldt is president?—A. Yes, sir.

Q. One reason for my asking to have you summoned was a telegraphic dispatch I received from you, stating you wished to be heard on this subject; and we shall be glad to have you give any information you have in reference to the investigation, or the use of money, or the raising of money in any way whatever in connection with the bill, if you have any.—A. Well, we saw some articles in the newspapers; we had been published throughout the whole United States as a kind of lot of "suspects," if we had been in Ireland, and it was due to us to show that we did not know anything.

Q. That is what we want to know—whether you do know anything or not—and I put the question broad enough for you to say whether you know anything on that point, or the raising of money for any purpose

whatever.—A. I have a paper here in connection with the object of the association which I will be pleased to hand to you gentlemen, but there is no direct reference to the bill in it.

Q. Do you wish to make this part of your evidence?—A. Not particularly, unless the committee desire to use any part of it.

The paper is as follows:

THE TAX ON SPIRITS.

*The origin and significance of the movement for its reduction.*

*To the honorable Members of the Forty-seventh Congress:*

GENTLEMEN: Believing that the action of the National Distillers' Association and its relation to matters now pending before Congress, notably the extension of the bonding period and the reduction of the tax on distilled spirits, are not understood, and as the press has called our actions into question through flagrant misrepresentations, we take the liberty of laying before you succinctly all the facts, from which it must appear that the distillers who advance the tax clearly foresaw that the agitation of its reduction would injure their business, and that they deprecated such agitation, and that they simply acquiesced in it when the condition of our national finances and commercial and industrial interests seemed to demand it.

The National Distillers' Association was organized in 1879. Its objects have been to aid the revenue department throughout the country in administering the law with uniformity, to secure strict compliances therewith, and solicit such legislation as has seemed to be alike beneficial to the business and the government. We are pleased to be able to say that several acts have been passed at the solicitation of this association, notably the act of December, 1879, to facilitate the exportation of alcohol, and that of June, 1880, best known as the "Carlisle bill." Both measures have given satisfaction to the trade, and they are universally esteemed as wise and just by all revenue officers, for the revenues have since greatly increased, and the tax has been faithfully collected and honestly paid.

Our chief object, however, at present is to prove conclusively that the distillers who prepay or advance the tax are not the originators of the proposition to reduce it, and that they have been mindful all along that the agitation of the subject would be very hurtful to their business.

The first annual meeting of our association was held at Cincinnati, November, 1879, at which, after discussion, the following was adopted:

"*Resolved*, That it is the sense of this meeting that we deprecate the agitation of the subject of the reduction of tax the coming year, as likely to result in depression and uncertainty of our trade."

At the next meeting, January, 1880, the tax question being again under discussion, the following, introduced by Mr. Shufeldt, now president of our association, was adopted:

"*Resolved*, That it is the sense of this meeting that reduction of the tax on spirits would be detrimental to the interests of the trade and of the government, and that this association pledges itself to assist the department to the best of its ability in the collection of the tax."

The association met again in Cincinnati in annual meeting, October, 1880. The condition of our national finances now exhibited a condition of plethora. The debt had been reduced $72,000,000 during the fiscal year. Hon. Samuel J. Randall, then Speaker of the House of Representatives, on the occasion of his renomination for member of Congress, addressed his constituents, using this language:

"*The burden of internal taxation will be first abated as our debt shall be reduced by the payments and expenses decreased by reduction in our rate of interest.*"

William D. Kelly was then known to entertain the same views as to the reduction of internal taxes. Thus early having the opinions of the two able leaders of the two political parties expressed, advocating the advisability of reducing internal taxes, at this meeting, October, 1880, Mr. Gallagher, of Philadelphia, presented the following:

"*Resolved*, That we, the National Distillers' and Spirit Dealers' Association, demand the reduction of the tax on distilled spirits from 90 cents to 50 cents per proof gallon, to take effect from and after the passage of the bill."

This resolution was referred to the Committe on Resolutions, which reported back to the meeting the following recommendation:

Regarding Mr. Gallagher's resolution to reduce the tax on spirits to 50 cents, the committee deem it inexpedient to discuss the matter at present, and recommend that the consideration of this question be deferred to the next annual meeting of the association.

The report of the committee was concurred in by the meeting, and the agitation for the reduction of the tax was again deprecated.

This brings us down to the date of the last meeting of our association, when we recognized the fact that the agitation of the reduction of internal taxes, including distilled spirits, could be deferred no longer. The Hon. William D. Kelly, now chairman of the Committee on Ways and Means, addressed the New York Tariff Convention on November 29, 1881, using the following unequivocal language:

"The time has come when we must determine whether our system of internal taxes shall be abolished or perpetuated. If these taxes are to be perpetuated, the *present* Congress or its immediate successor must revise our entire revenue system. If the reduction of revenue, which is inevitable, be long delayed, our excessive income will require changes so sudden and momentous as to convulse our financial, industrial, and commercial systems. * * *

"Again, I ask that these taxes (internal taxes) shall be repealed at the earliest practicable day, because they are the sole restraint upon the freedom of trade between American citizens. But for the restrictions they impose, trade within our territorial limits, and among our more than 50,000,000 people, would be free as air. * * * "

Concluding, he says:

" * * * * And I aver that the abolition of these taxes would do more to harmonize the country than any single act of legislation that statesmanship can suggest. I trust it may be done, and done quickly."

In November, 1881, the National Tariff Convention was held at Chicago, Ill., which was presided over by the Hon. William McKinley, of Ohio, at present a member of the Committee on Ways and Means of the House of Representatives. At this convention this resolution was adopted:

"*Resolved*, That our national internal revenue taxes should be gradually reduced, with a view to their extinguishment within a reasonable period."

In this connection we may also mention that David A. Wells, who is generally recognized as an authority on revenue matters, published an article in the North American Review for December, 1881, in which he strongly advocated the reduction of the tax on distilled spirits. David A. Wells believes that a reduction of the tax would not be followed by a corresponding reduction of revenue.

When the National Distillers' and Spirit Dealers' Association last met, the subject of reducing internal taxes was agitated by politicians and members of Congress irrespective of party, and tariff conventions held in several parts of the country, and we could therefore no longer ignore the fact or repress the agitation; and after protracted discussion the following resolution was adopted by us:

"*Resolved*, That the internal revenue tax of 90 cents per proof gallon be reduced to 50 cents per proof gallon on all distilled spirits now in bond and to be produced hereafter."

It was foreseen that this would disturb values and restrict trade, and we were therefore greatly interested in having the matter disposed of by Congress at the earliest practicable moment. In his address at the last meeting of the association the secretary said:

"There appears to be a pretty general conviction that the tax is too high, whilst, on the other hand, there is a fear expressed that the agitation of this subject would unsettle values and do injury to the trade. * * * The dealer would naturally work off his stock on hand, and buy as sparingly as his necessity would demand. * * * It therefore becomes a serious question, fitted for our patient reflection and mature consideration, whether the present is a good time to work for a reduction, when our export demand is cut off, and our warehouses contain an unusual quantity of spirits. * * * It is undoubtedly true that the government is not now in want of the excessive tax, and that the high duty greatly restricts the use of spirits in the arts and industries of the country, and it might not be too much to say that the increased uses to which alcohol and spirits would be put would in a short time yield as much revenue to the government as the present exorbitant and repressive tax."

Immediately on the assembling of the Forty-seventh Congress, bills were introduced reducing tax on spirits, and the incidental depression in the market was worse than had been anticipated. In the early fall months distillers fill their stables with cattle and hogs. These are mainly fed for other parties on contracts, and have to be fed till the first of May or June succeeding. During the last fiscal year there were fed at distilleries in this country 83,867 cattle and 95,598 hogs. It will be apparent that distillers cannot keep the production within the wants of the trade during the feeding season, especially when the trade is affected by pending legislation. Finding themselves thus circumstanced, the distillers of the Northwestern States organized the Western Export Association, the object of which was to induce all distillers to restrict production to the lowest limit consistent with their feeding contracts, and to export surplus alcohol, which our home trade could not use. The grain used by the distillers the past year was scarce and high in our markets, whilst potatoes, from which alcohol is chiefly made in Europe, were both cheap and abundant. Therefore the alcohol which was exported did not realize cost and freight in the foreign markets. In order to encour-

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